

THE
POLITICAL STATE
OF
THE BRITISH EMPIRE;

CONTAINING
A GENERAL VIEW
OF
THE DOMESTIC AND FOREIGN POSSESSIONS
OF THE CROWN;
THE LAWS, COMMERCE, REVENUES, OFFICES,
AND OTHER ESTABLISHMENTS,
CIVIL AND MILITARY.

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POLITICAL STATE

OF THE

BRITISH EMPIRE.



OFFICERS OF STATE.

THE general necessity of employing agents of talent and credit to execute the business in the various departments of government is strongly felt in every country; but the assignment of each branch to a distinct avowed minister is peculiarly requisite in the British system. In other nations, the bounty and patronage of the crown, and the execution of all the weighty affairs of state may be committed to one person, distinguished by the name of favourite, prime minister, or premier, and his malversations may be sheltered by the authority of the monarch; but, in Great Britain, the axiom, that the king can do no wrong, is prevented from becoming an engine for oppressing the subject, by the strict responsibility annexed to the situation of ministers, and the power of inquiry and impeachment tenaciously reserved, and vigorously exercised by parliament.

In the following enumeration, the duties of the most eminent ministers of state will be exhibited, and some details afforded respecting the offices or departments over which they preside. They are given in the order of their precedence, with the addition of ambassadors and consuls in foreign lands.

I. THE LORD HIGH STEWARD. In ancient times the lord high steward of England was the first great officer of the crown. The title is of Saxon etymology, *steda* signifying room, or *stead*, and *ward* a warden or keeper; and therefore to the lord high steward of England belonged vice-regal power. As next under the king he supervised and regulated the administration of justice, and all other affairs of the realm both civil and military.

The office was of great antiquity, being established before the reign of Edward the Confessor. It was annexed to the lordship of Hinckley in Leicestershire, which, belonging to the family of Montfort earl of Leicester, the possessors of that title were, in right of their fief, hereditary lord high stewards of England. Simon de Montfort, the last earl of that family, being defeated in the rebellion which he raised against Henry III., and his estates becoming forfeit, the monarch prudently embraced the opportunity of retrenching the authorities of an office which, in the hands of a turbulent and ambitious man, had been found sufficient to disquiet the rule it was intended to enforce, and shake the throne it was destined to support. It still continued, though reduced in power, an office of inheritance, till Henry of Bolingbroke, who last possessed it in that form, usurped the throne by the title of Henry IV. From that period lord high stewards have been appointed *pro hac vice* only, generally to officiate at coronations, or at trials before the high court of parliament.

A lord high steward, appointed for a coronation, receives and decides on the bills and petitions of all persons, peers or others, claiming to hold estates by grand serjeanty, and, in virtue of that tenure, to do certain honourable services at the king's coronation. In these cases, he is obliged to judge according to the laws and customs of the realm, and is entitled to customary fees and allowances. At the coronation, he carries St. Edward's crown, and the office is never conferred on any but a peer of parliament. Mention has already been made of the duty and office of the lord high steward on the trial of impeachments; he is, on those occasions, attended from his own abode to the house of lords in great state by the judges and officers of arms, and, after reading his commission, the white wand is with much ceremony put into his hands, and from that time, during the sittings on the trial, he is styled *your grace*. This office being only occasional, does not affect the general government of the realm, but is noticed in this place on account of its dignity.

2. LORD HIGH CHANCELLOR. The situation of lord high chancellor is the most dignified of all those which are considered as permanent; it is not indeed absolutely necessary that there should always be a lord chancellor, since the great seal may be given to a lord keeper, or put in commission. The powers of lord chancellor and lord keeper are the same, and therefore since the statute, 5 Elizabeth, both cannot be appointed at the same time; formerly they could, for it is said Henry V. had a great seal of gold which he delivered to the bishop of Durham, making him lord chancellor; and one of silver, which he gave to the bishop of London, appointing him lord keeper. By stat.

t W. & M. c. 21., commissioners appointed to execute the office of lord chancellor may exercise all the authority, jurisdiction, and execution of laws, which the lord chancellor, or lord keeper, of right ought to use and execute. Since that period the great seal has, on various occasions, been in commission, either in times when the pretensions of different persons could not be adjusted without difficulty by the other members of the cabinet, or when no person sufficiently eminent to fill a station so exalted could be found to accept one from which he might be so suddenly removed.

The lord high chancellor or keeper is created by the mere delivery of the king's great seal into his custody; whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedency to every temporal lord: and the act of taking away this seal by the king, or of its being resigned or given up, determines the office. The name chancellor is said to be derived *a cancellando*, because all patents, commissions, and warrants coming from the king, are perused by him before they pass under the great seal, and he may cancel them if repugnant to law; which is the highest of his privileges. Others however derive the name from the place where he anciently sat in judgment, which was said to be, like the chancel of a church, inclosed between lattices, *inter cancellos*. It is an office of high antiquity, having been certainly known to the courts of the Roman emperors; where it originally seems to have signified a chief scribe or secretary, who was afterwards invested with several judicial powers, and a general superintendency over the rest of the officers of the prince. From the Roman empire it passed to the Roman church, ever emulous of imperial state; whence every bishop has, to this day, his chancellor, the principal judge of his consistory; and when the modern kingdoms of Europe were established on the ruins of the empire, almost every state preserved its chancellor, with different jurisdictions and dignities, according to their various constitutions. In England it is clear that the British and Saxon kings had their chancellors, and the principal circumstance denoting their office, was the delivery to them of the great seal, which was sometimes tied about their necks.

The chancellor is a privy counsellor by his office, and, according to lord chancellor Ellesmere, prolocutor of the house of lords by prescription. To him belongs the appointment of all justices of the peace throughout the kingdom. Being formerly usually an ecclesiastic, (for none else were then sufficiently conversant in writings to be capable of the office;) and presiding

over the royal chapel, he became keeper of the king's conscience; visitor, in right of the king, of all hospitals and colleges of the king's foundation; and patron of all the king's livings under the value of twenty pounds per annum in the king's books. He is the general guardian of all infants, idiots, and lunatics; and has the general superintendence of all the charitable uses in the kingdom. And all this over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the court of chancery, which will be noticed in another division of this work. His oath of office engages him to observe the following particulars:

1. That he will well and truly serve our sovereign lord the king and his people in the office of chancellor (or lord keeper).
2. That he shall do right to all manner of people, poor and rich, after the laws and usages of the realm.
3. That he shall truly counsel the king, and his counsel he shall keep.
4. That he shall not know nor suffer the hurt or disheriting of the king, or that the rights of the crown be decreased by any means as far as he may hinder it.
5. And if he may prevent it, he shall make it clearly and expressly to be known to the king, with his true advice and counsel; and,
6. And that he shall do and purchase the king's profit in all that he reasonably may.

The emoluments of the office of chancellor are very considerable, derived as well from the court where he presides, as from fees for affixing the great seal to a great variety of public instruments, and those which are due to him as speaker of the house of lords; but as he only holds his situation during pleasure, and if a lawyer, as in modern times he invariably is, he cannot accept of any situation in Westminster hall, after having filled the superior one of chancellor; it is usual to reward those who retire with a considerable pension; and some, before they would, by assuming so precarious an office, sacrifice all their other prospects, have stipulated for a remuneratory pension, or for the reversion of some ample sinecure place.

3. **LORD HIGH TREASURER.** The lord high treasurer receives his appointment from the king in person, who formerly was used to deliver to him a golden key of the treasury, but now only a wand. When appointed, he goes in state to the court of chancery, and takes an oath similar to that of the lord chancellor, and to the court of exchequer, where he takes his seat among the barons as chancellor of that court. He is a lord by his office, and governs the upper court of exchequer; has the custody of the king's treasure, and of foreign and domestic records there deposited. He has the appointment of all commissioners and other officers employed in collecting the revenues of

of the crown; the nomination of all escheators, and disposal of all places in any wise relating to the revenue of the kingdom; and power to let leases of the crown lands.

In modern times a lord treasurer has not been appointed, but the office has been executed by five lords commissioners, of whom the chief, called the first lord of the treasury, possesses most of the powers formerly held by the lord treasurer, and is generally, though not invariably, chancellor and under treasurer of the exchequer. It is not exactly true that the chancellor of the exchequer cannot sit on the bench of that court for the decision of law questions; he has done so even in modern times, but, as the consideration of that part of the jurisdiction of the exchequer belongs to another branch of the work, it will not be treated on in this place, but those matters only will be noticed which belong to the office of revenue in which the first lord of the treasury and chancellor of the exchequer ordinarily and properly presides. The salary of the first lord of the treasury is 4000*l.*; the other lords have 1600*l.* each.

At the treasury, besides the lords commissioners, are two joint secretaries, four chief clerks, six senior clerks, six junior clerks, a minute clerk, two copying clerks, one principal clerk, with six assistants for keeping and stating the accounts of the revenue department, a receiver of fees, a keeper of the papers, a solicitor, a chamber keeper, four exchequer messengers, and one custom house messenger, a ranger of books and bag bearer, a house-keeper, a housekeeper to the levee rooms, and a door keeper; besides which there are five extra clerks, and three extra messengers employed in the treasury.

The business of the *board of treasury* is to consider and determine upon all matters relative to his majesty's civil list or other revenues; to give directions for the conduct of all boards and persons entrusted with the receipt, management, or expenditure of the said revenues; to sign all warrants for the necessary payments thereout, and generally to superintend every branch of revenue belonging to his majesty or the public.

The duty of the *joint secretaries* is to attend the board, to receive their orders, see to the execution of the same, and generally to superintend the conduct of the business in every department of the office. The attendance of the joint secretaries is in general constant and unremitting, and that of the chief and other clerks daily from about ten in the morning till the business of the day is finished; excepting very few instances, in which their attendance has, for special reasons, been dispensed with. Each of the secretaries has a salary of 322*l.* 17*s.*

The duty of the *chief clerks* is occasionally to attend the board,

to distribute the official business among the other clerks, to prepare themselves all instruments that are of a special nature, to examine all those which are prepared by others, to present them for signature to the board, or to the secretaries, as the case may require, and to deliver them over to one of the six senior clerks, among whom the official business of the treasury is divided, each having a department for which he is responsible, and being assisted therein by one of the junior clerks.

The duty of the six *senior clerks*, with their assistants, is to prepare all instruments whatever that arise in each of their said departments, and deliver them to one of the chief clerks to be presented for signature, and, when returned, to give them over to the receiver of the fees, whose duty is to deliver them to the respective parties upon the receipt of the fees payable thereon, with which he charges himself, and accounts weekly for the same to one of the chief clerks.

The duty of the principal and other *clerks* of the revenue department is, to make up books containing a state of the income and issues of the customs and other duties and revenues payable at the receipt of the exchequer; for this purpose they receive weekly certificates from the exchequer, checked by other certificates received from the customs, and other offices of the revenue, from which they make out weekly for the treasury board what is called a cash paper, shewing the balance of money remaining in the exchequer for the uses of the civil government, or for the public service of the current year: they likewise make out for his majesty a monthly statement of the civil list receipts, and payments, and keep such other books and accounts as are required by the board of treasury, or are necessary for the public service. Each of the chief clerks has a salary of 1080*l.*, the appointments of the inferiors are from 700*l.* to about 100*l.*

The duty of the *keeper of the papers* is to schedule and digest all papers of any import transmitted to his repository; to inspect the books of office, to range and dispose them in presses, and be ready to inform the secretaries and clerks of their respective contents, when necessary: this officer has a deputy.

The *solicitor* considers it as his duty to solicit, prosecute, defend, and manage all causes and affairs from time to time directed by the lords of the treasury, the principal secretaries of state, or attorney general; to peruse all papers and memorials referred to him from the treasury, and to make his report in writing to their lordships thereon. His attendance on this duty is generally daily, and at all hours; but naturally varies according to the degree of business that occurs. His fixed salary is 2000*l.*, but the business continually arising in all parts of the kingdom

kingdom renders his situation extremely laborious, and probably very lucrative.

The duty of the remaining offices is implied by their titles; and their attendance is daily during the office hours. Their emoluments are various; sufficiently liberal, but not extravagant.

To the *chancellor of the exchequer* it peculiarly belongs to take care of the interest of the crown. He is always in commission with the lord treasurer for the letting of crown lands, &c. and has power, with others, to compound for forfeitures of lands upon penal statutes. He has also great authority in managing the royal revenues; and it is generally understood to be his duty to propose in the house of commons the measures of supply, ways and means necessary for the service of the current year. His salary is 1800*l.* per annum.

Under the chancellor of the exchequer are the several offices of the auditor, the clerk of the pells, the tellers, the chamberlains, the usher of the receipt, and the paymaster of the exchequer bills.

Auditor. The duty of this officer is to take the accounts from other public offices, who collect the national revenue. He files the tellers bills, and duly enters them, and gives the lords of the treasury a certificate of the money received from the several branches of the revenue the week before; and gives in those accounts from year to year to the parliament. He also makes out debentures to the respective tellers of the exchequer before they receive any money, and takes their accounts, and sees the tellers money locked up in the royal treasury. He is appointed for life, by a constitution under the hands and seals of the commissioners of the treasury. All the exchequer bills, orders, debentures, patents, and other instruments which pass this office, are signed by him. The official profits are not received by himself, but by his first clerk, who accounts with him for them every month. His emoluments were formerly very large; they are now fixed by statute at 4000*l.* per annum.

In his office are a chief clerk, a keeper of the records, and clerk of the debentures, who have all large salaries; and various other persons are employed in inferior departments.

Clerk of the Pells. The duty of this officer is to enter every teller's bill in a parchment roll, called *pellis acceptorum*, the roll of receipts, and to make another roll, called *pellis exituum*, a roll of the disbursements. He is appointed for life, by a constitution under the hands and seals of the commissioners of the treasury, to exercise his office either by himself or deputy. In consequence of this privilege, it has not been usual, for many years, for the clerk of the pells to execute any part of the business himself, the deputy transacts the whole, and receives and

accounts with his principal for all the profits that belong to him. The clerk of the pells receives for himself, deputy, and twenty clerks 6840*l.* a year. Among the persons employed in his office are *clerks of the introitus and exitus*, of declarations, patents, and debentures; and branches of this office are those of annuities and tontines.

Tellers. The duty of these officers is to receive all money due to the king, and give a bill of it to be entered by the clerk of the pells. They also pay all monies payable from the king, and enter the amount in weekly and yearly books, to be delivered to the lords of the treasury. The teller's is one office in four divisions, each consisting of a teller, a deputy, and first clerk, two offices executed by the same person, a second clerk and three inferior clerks; in all twenty-four persons. The teller is appointed for life by letters patent, which empower him to perform the office by deputy; and in that manner the whole business has long been transacted, the teller himself executing no part; even the profits being received and accounted for to him by his deputy. The emoluments annexed to the situation of teller are estimated at 2700*l.* per annum. The deputy, as such, has no profit whatever; but, as first clerk, he has fees both on the receipt and issue. The fees on the receipt are called bill money, and are in consideration of his writing the bills.

Of the offices of *chamberlain*, *usher of the receipt*, and some dependant situations as *tally cutters*, it is not necessary here to treat, since, in consequence of the statute 23 Geo. III. c. 82., some of them are already abolished, and the others will be so at the death, surrender, forfeiture, or removal, of the present possessors.

Paymaster of the Exchequer Bills. This office is executed by three paymasters, a comptroller, an accountant, a cashier, and two clerks; to whom are added a housekeeper and messenger, and occasional assistant clerks. The paymaster, the comptroller, and the housekeeper, are appointed by the commissioners of the treasury by constitution during pleasure; the rest of the officers are nominated by the paymasters themselves. The officers, as well as clerks, are paid by salaries only; no fee or gratuity being taken by any of them, except a small annual fee of 2*l.* 7*s.* allowed the accountant for making up his year's account. Each paymaster has a nett annual salary of 249*l.* 3*s.* 4*d.* The comptroller's salary is 308*l.* 1*s.* The salaries of the rest are paid, clear of deductions, out of the public funds.

4. LORD PRESIDENT OF THE COUNCIL. As, under the title lord treasurer, all the offices and duties connected with the treasury were in general enumerated; so, in this division, notice will

OFFICERS OF STATE.

will be taken of all matters relating to his majesty's privy council. The lord president is the fourth great officer of state, and is recorded as having existed in the seventh year of King John. In the reign of Elizabeth the office was discontinued, but seems to have revived in that of James I.; under Charles II. it was permanently re-established, and has ever since continued. The office has been always granted by letters patent under the great seal *durante bene placito*; and this officer is to attend on the king, to propose business at the council table, and report to his majesty the transactions there; also he may associate the lord chancellor, treasurer, and privy seal, at naming of sheriffs; and all other acts limited by any statute to be done by them.

The privy council, according to Sir Edward Coke's description of it, is a noble, honourable, and reverend assembly of the king and such he wills to be of his privy council, in the king's court or palace. The king's will is the sole constituent of a privy counsellor; and this also regulates their number, which in ancient times was twelve or thereabouts. Afterward it increased to so large a number that it was found inconvenient for secrecy and dispatch; and, therefore, in 1679, Charles II. limited it to thirty, whereof fifteen were to be the principal officers of state, and those to be counsellors, *virtute officii*; and the other fifteen were composed of ten lords and five commoners of the king's choosing. But since that time the number has been much augmented, and now continues indefinite. From this circumstance, however, no inconvenience can arise, as those only attend who are specially summoned for that particular occasion upon which their advice and assistance are required. The *cabinet council*, as it is called, consists of those ministers of state who are more immediately honoured with his majesty's confidence, and who are summoned to consult on the important and arduous discharge of the executive authority: their number and selection depend only on the king's pleasure, and each member of that council receives a summons or message for every attendance.

Privy counsellors are made by the king's nomination, without either patent or grant; and, on taking the necessary oaths, they become immediately privy counsellors during the life of the king that chooses them, but subject to removal at his discretion. A privy counsellor, though but a private gentleman, is styled *right honourable*, and has precedence of all knights, baronets, and the younger sons of all barons and viscounts.

As to the qualifications of members to sit at this board, any natural born subject of England is capable of being a member of the privy council, taking the proper oaths for security of the government, and the test for the security of the church. But in order

order to prevent any persons under foreign attachments from insinuating themselves into this important trust, as happened in many instances in the reign of William III., it is provided by the act of settlement, that no person born out of the dominions of the crown of England, unless born of English parents, even though naturalized by parliament, shall be capable of sitting in the privy council.

The duty of a privy counsellor appears from the oath of office, which consists of seven articles: 1. 'To advise the king according to the best of his cunning and discretion. 2. 'To advise for the king's honour, and good of the public, without partiality through affection, love, meed, doubt, or dread. 3. 'To keep the king's council secret. 4. 'To avoid corruption. 5. 'To help and strengthen the execution of what sh. ll be there resolved. 6. 'To withstand all persons who would attempt the contrary. And, lastly, in general, 7. 'To observe, keep, and do all that a good and true counsellor ought to do to his sovereign lord.

The power of the privy council is to inquire into all offences against the government, and to commit the offenders to safe custody, in order to take their trial in some of the courts of law. But their jurisdiction herein is only to inquire, and not to punish; and the persons committed by them are entitled to their *habeas corpus*, by statute 16 Car. I. c. 10. as much as if committed by an ordinary justice of the peace. And, by the same statute, the court of star-chamber, and the court of request, both of which consisted of privy counsellors, were dissolved; and it was declared illegal for them to take cognizance of any matter of property belonging to the subjects of this kingdom. But, in plantation or admiralty causes, which arise out of the jurisdiction of the kingdom, and in matters of lunacy or idiotcy, being a special flower of prerogative, with regard to these, although they may eventually involve questions of extensive property, the privy council continues to have cognizance, being the court of appeal in such cases; or, rather, the appeal lies to the king's majesty himself in council. Whenever also a question arises between two colonies or dependencies of the crown, as concerning the extent of their charter, and the like; the king in his council exercises original jurisdiction therein, upon the principles of feudal sovereignty. So likewise when any person claims an island, or a province, in the nature of a feudal principality, by grant from the king or his ancestors, the determination of that right belongs to his majesty in council; as was the case of the Earl of Derby with regard to the Isle of Man, in the reign of Queen Elizabeth, and the Earl of Cardigan, and others, as representatives of the Duke of Montague, with

with relation to the Island of St. Vincent, in 1764. But from all the dominions of the crown, excepting Great Britain and Ireland, an *appellate* jurisdiction, in the last resort, is vested in the same tribunal, which usually exercises its judicial authority in a committee of the whole privy council, who hear the allegations and proofs, and make their report to his majesty in council, by whom the judgment is finally given.

The privileges of privy counsellors, as such abstracted from their honorary precedency, consist principally in the security which the law has given them against attempts and conspiracies to destroy their lives. For, by statute 3 Hen. VII. c. 14. if any of the king's servants of his household conspire or imagine to take away the life of a privy counsellor, it is felony, though nothing be done upon it. The reason of making this statute, Sir Edward Coke tells us, was because such a conspiracy was, just before this parliament, made by some of the king's household servants, and great mischief was like to have ensued thereupon. This extends only to the king's menial servants. But the statute 9 Anne, c. 16. goes farther, and enacts, that any person who shall unlawfully attempt to kill, or shall unlawfully assault, and strike, or wound, any privy counsellor in the execution of his office, shall be a felon without benefit of clergy. This statute was made upon the daring attempt of the Sieur Guiscard, who, when under examination for high crimes, in a committee of the privy council, stabbed Mr. Harley, afterwards Earl of Oxford, with a penknife.

The dissolution of the privy council depends upon the king's pleasure; and he may, whenever he thinks proper, discharge any particular member, or the whole of it, and appoint another. By the common law also it was dissolved, *ipso facto*, by the king's demise, as deriving all its authority from him; but now, to prevent the inconveniences of having no council in being at the accession of a new prince, it is enacted, by statute 6 Anne, c. 7. that the privy council shall continue for six months after the demise of the crown, unless sooner determined by the successor.

The court of privy council is of great antiquity. The government in England was originally by the king and privy council; though at present the king and privy council only intermeddle in matters of complaint on sudden emergencies; their constant business being to consult for the public good in affairs of state.

The lords and commons assembled in parliament have often transmitted matters of high concern to the king and privy council; and acts of the privy council, whether orders or proclamations, were of great authority. Henry VIII. procured an act of parliament to be made, that with the advice of his privy council,

council, he might set forth proclamations, which should have the force of laws; but this most tyrannical and detestable statute was repealed in the reign of Edward VI.

Acts of the privy council continued of great authority until the reigns of Charles I. and II.: and by these were controversies sometimes determined touching lands and rights, as well as the suspension of penal statutes; but their authority in this respect was never considered consonant with law, and was formally abolished by statute.

The king, with advice of his council, publishes proclamations binding to the subject; but they are to be consonant to, and in execution of the laws of the land.

By statute 33 Hen. VIII. c. 23. persons examined by the privy council, on treasons, &c. done within or without the realm, may be tried before commissioners of oyer and terminer, appointed by the king, in any county of England. This statute, as far as it relates to treason committed within the kingdom, is repealed by statute 1 and 2 Philip and Mary, c. 10.; but if a person be killed beyond sea, out of the realm, the fact may be examined by the privy council, and the offender tried according to the aforesaid statute.

As many important acts, deeply affecting the king and realm, must emanate from this body, it is usual for those who give some species of advice, to sign their names to a paper containing their opinions, thus pledging themselves to be responsible for its legality or necessity.

To the privy council belong four clerks in ordinary, who have annual salaries of 1000*l.* each, five clerks extraordinary, four under clerks, and a keeper of the records.

Lords of Trade. The necessity of an establishment for the purpose of investigating matters essential to the commerce of the nation, and reporting to superior powers, was strongly felt as soon as England began to gain an ascendancy as a trading nation. In 1655, Cromwell appointed his son Richard, with many lords of his council, judges, and gentlemen, and about twenty merchants of London, York, Newcastle, Yarmouth, Dover, and other places, "to meet and consider by what means the traffic and navigation of the republic might be best promoted and regulated, and to report on the subject." How useful such an establishment might have been, even at that period, is demonstrated by the observation made by the Dutch, as recorded in Thurloe's state papers. "A committee for trade," they said, "was some time since erected in England, which we then feared would have proved very prejudicial to our state; but we are glad to see that it was only nominal, so that we hope in time, those of London will forget that
" ever

“ ever they were merchants.” At the restoration, Charles II. established a council for the same purposes, consisting of several high officers of state, and other persons; but this was no more effective than the former plan. In 1668, by persuasion of Lord Ashley, who was then chancellor of the exchequer, the king instituted a council of commerce, consisting of a president, salary 800*l.*; vice president, 600*l.*; and nine other counsellors, with each 500*l.* salary; who, instead of the former method of referring all commercial matters to a fluctuating committee of the privy council, which was liable to several objections, were to apply themselves diligently to the advancement of the nation’s commerce, colonies, manufactures, and shipping; but in a few years the king laid aside this beneficial institution, and commercial matters fell into their former way of a reference to a committee of the privy council. Another attempt was made by the same monarch in 1672, to establish the committee of trade, but, like the former efforts, it was formally announced, and speedily abandoned. Consequently all disputes and regulations relative to commerce and colonies were usually referred to committees of the privy council; but such occasional committees being a constantly varying set of members, and having besides no stated appointments for their trouble and attendance, it is by no means surprising that they acted but loosely and superficially. In this position stood the commercial concerns of the nation, till 1696, when, on the repeated complaints of the merchants of England, of great captures by the French, and that little regard or care had, for many years past, been taken of trade and commerce, King William created a new and standing council for commerce and plantations, in their most comprehensive sense, commonly styled the lords commissioners for trade and plantations. In the list were contained all the great officers of state, together with eight other persons, among whom was the celebrated John Locke; and each of the eight commissioners, appointed during the king’s pleasure, had a salary of 1000*l.* To this board proposals were made by merchants and others, for the ease, improvement, and encouragement of our commerce, navigation, plantations, manufactures, fisheries, &c. for redressing all grievances and burthens on trade, which were there argued between one party and another, and generally by counsel. British consuls appointed to reside in foreign parts, for the benefit and protection of our commerce, received their instructions from this board, with whom they were obliged to hold constant correspondence; as were also the governors of the American plantations, for the improvement of their respective governments, who also transmitted to this board the journals of their councils and assemblies, the accounts of the collectors

tors of the customs, and of naval offices, &c. Reports were also made, from time to time, how Britain might be best supplied with naval stores from the colonies, what new productions might be raised, and old ones improved. Inquiries also came before this board, for regaining of lost branches of trade, as well as enlarging those we possessed, and establishing new ones; and how to employ the poor and idle to the best advantage. Hearings also between merchants, trading corporations, manufacturers, &c. at home, as well as of appeals from the plantations, were brought before this board; who, upon all such matters, and many others, as the general balance of trade between England and foreign nations, made reports, and gave their opinions to the king and his privy council. That such a board might be eminently useful, the outline of duty leaves no room to doubt; and that it was so, cannot well be questioned, when the great names who occasionally composed it are considered, and the extent of their labours is viewed, which were comprized in two thousand three hundred folio volumes. The members of this board being, however, removeable at pleasure, it was, during the American war, when notions of economy and diminution of the government patronage were carried to an extent which many judicious persons deemed unwarrantable, considered advisable to suppress the establishment altogether. Accordingly, in the year 1782, it was abolished by act of parliament, and its powers were consigned to a committee, regulated by a president and vice president, and composed of the great officers of state for the time being, and some other privy counsellors. By this reform the patronage of government was withdrawn from eight persons, who might otherwise have been rewarded to the clear amount of 800*l.* a year each; and the saving to the nation was, at the utmost, no more than 6400*l.* Perhaps the period when this board was abolished was the very moment when its active functions could have been most beneficially exerted; when commerce was about to receive a new impulse, and unprecedented extension; encouraged by circumstances never foreseen, yet embarrassed by litigations, involved in the discordant interests of rivals, and encumbered with questions both legal and political, respecting charters, monopoly, and paper credit, requiring the utmost calmness in investigation and firmness in decision.

In the office of the lords of trade, as at present constituted, are two secretaries, being also clerks of the council; a chief clerk, with subordinate clerks, and other officers.

5. LORD PRIVY SEAL. The lord privy seal is an officer of great trust, honour, and antiquity, being mentioned in the statute, 2 Richard II. and then ranked among the chief persons of the

the realm. He is appointed by letters patent ; is a privy counsellor by his office ; takes place next after the lord president of the council, and before all dukes ; and would be chief judge of the court of requests, were it revived. He is admitted into his place by taking the oath of office prescribed by law. He derives his name from having the custody of the privy seal, which he must not put to any grant, without good authority under the king's signet, nor to any warrant, if contrary to law and custom, or inconvenient, without first acquainting his majesty therewith. This seal is used by the king to all charters, grants, and pardons, signed by the king before they come to the great seal ; but a warrant may be granted by the king, under the privy seal, to issue money out of the exchequer, and is sufficient, because a chattel in possession ; it may also be affixed to other things that never pass the great seal, as, to cancel a recognizance made to the king, or to discharge a debt ; but, no writs can pass this seal which touch the common law. In the office of the lord privy seal are four clerks and two deputies.

6. LORD GREAT CHAMBERLAIN OF ENGLAND. The office of the lord great chamberlain is very ancient, and he was formerly a person of high importance. To him belong livery and lodging in the king's court, and certain fees due from each archbishop or bishop, when they do their homage or fealty to the king, and from all the peers of the realm at their creation, or doing their homage or fealty ; and, at the coronation of every king, he is to have forty ells of crimson velvet for his own robes ; and, on the coronation day, before the king rises, to bring his shirt, coif, and wearing cloaths ; and after the king is by him apparelled, and gone forth, to have his bed, and all the furniture of his bed-chamber, for his fees ; and all the king's night apparel ; and to carry at the coronation the coif, gloves, and linen, to be used by the king on the occasion ; also the sword and scabbard, and the gold to be offered by the king, and the robes-royal, and crown ; and to undress and attire his majesty with the robes-royal ; and to serve him on that day, before and after dinner, with water to wash his hands, and to have the basin and towels for his fees. To this officer also belongs the care of providing all things in the house of lords, in the time of parliament ; and to that end he has an apartment in the vicinity ; he has the government of the whole palace of Westminster, and he issues out his warrants for preparing, sitting, and furnishing Westminster Hall against coronations and trials of peers in parliament time. The gentleman usher of the black rod, the yeoman usher, and door-keepers, are under his command. He disposes of the sword of state to what lord he pleases, to be carried before the king when he comes to the parliament ; and goes on the right hand

hand of the sword, next to the king's person, and the lord marshal on the left. Upon all solemn occasions, the keys of Westminster Hall, and the keys of the court of wards, and court of requests, are delivered to him.

This high office appertained, for many centuries, to the noble family of De Vere, Earl of Oxford, having been granted to them by Henry I. On the death of John De Vere, the sixteenth earl of Oxford, without heirs male, Mary, his sole daughter and heiress, married Peregrine Bertie, Lord Willoughby, of Eresby, who made claim to the earldom of Oxford, as also to the titles of Lord Bolbeck, of Bolbeck Castle, in the parish of Whitchurch, near Aylesbury, in the county of Buckingham, Sandford and Badlesmere, and to the office of lord great chamberlain of England. After much dispute, the house of lords gave judgment that he had made good his claim to the office of lord great chamberlain of England, but not to the other objects of his demand; and he was admitted into the house of lords with his staff, November 22, 1626. His descendants uninterruptedly enjoyed this post till the death of Robert Bertie, fourth duke of Ancaster and Kesteven, Marquis and Earl of Lindsey, and Lord Willoughby of Eresby, lord great chamberlain in July, 1779, who dying unmarried, was succeeded, as Duke of Ancaster and Kesteven, Marquis and Earl of Lindsey, by his uncle the Lord Brownlow Bertie; but for the great chamberlainship there were several claimants, viz. his grace Brownlow, Duke of Ancaster; Hugh, Earl Percy, eldest son of the Duke of Northumberland; Charlotte, Duchess Dowager of Athol, in her own right Lady Baroness Strange, of Knockyn; the Lady Priscilla Barbara Elizabeth Burrell, in her own right Baroness Willoughby, of Eresby; and the Lady Georgina Charlotte Bertie, sisters and co-heirs of Robert, fourth Duke of Ancaster, deceased: when, after hearing all the parties at full length, in support of their several claims, the house of peers desired the advice of the twelve judges, who gave their opinion, that the office devolved to the Lady Willoughby of Eresby, and her sister Lady Georgina Charlotte Bertie, as heirs to their brother Robert, Duke of Ancaster, deceased; and that they had powers to appoint a deputy to act for them, not under the degree of a knight, who, if his majesty approved of him, might officiate accordingly. And agreeably to this opinion, the house gave judgment. The office is executed by a deputy, who has 3000*l.* a year.

7. LORD HIGH CONSTABLE. This is one of the offices which in ancient times acquired so much power as to be dangerous to sovereignty, but is now only created occasionally to attend a coronation. The lord high constable presided jointly

with the earl marshal in the court of chivalry, and the office was transmitted by inheritance.

8. EARL MARSHAL. Of the duty and rank of this officer mention has already been made.

9. LORD HIGH ADMIRAL. In former-times the post of lord high admiral was of great trust and honour, and usually conferred on a prince of the blood, or one of the highest class of nobility. He had the management of all maritime affairs, the government of the royal navy; with power of decision in all maritime cases, both civil and criminal. He judged of all transgressions done upon or beyond sea, in any part of the world, upon the coasts, in all ports or havens, and upon all rivers below the first bridge from the sea. By him all naval officers, from an admiral to a lieutenant, were commissioned; as were all deputies for particular coasts, and coroners for viewing dead bodies found on the sea shore or at sea. He also appointed judges for his court of admiralty. To the lord high admiral belonged by law and custom, all fines and forfeitures of all transgressions at sea, on the sea shore, in ports, and from the nearest bridge on rivers to the sea; also the goods of pirates and felons condemned or outlawed; and all waifs, stray goods, wrecks of sea, deadlands; a share of all lawful prizes, ligan, jetfam, and flot-fam, not previously granted or belonging to lords of manors adjoining the sea; all great fishes, as sea hogs, and others of extraordinary bigness called royal fishes, whales and sturgeons only excepted.

Since the Revolution, the office of lord high admiral has been constantly, as it had before been frequently, put into commission, and the commissioners are generally styled *lords of the admiralty*. A spacious building, situate near Whitehall and formerly called Wallingford House, is retained for their official use, and for the residence of some of the commissioners.

They are seven in number; the first lord having a salary of 4000*l.*, and a house in the admiralty office; each of the others receiving in salary and allowances 1000*l.* per annum, and the four senior having also houses in the admiralty.

The business of the board of admiralty is to consider and determine on all matters relative to his majesty's navy, and departments thereunto belonging; to give directions for the performance of all services that may be required, either in the civil or naval branch; to sign, by themselves or their secretaries, all orders necessary for carrying their directions into execution; and generally to superintend and direct the whole naval and marine establishments of Great Britain.

The establishment also consists of two secretaries, a chief clerk, and several established and extra clerks, a secretary to the

first lord, two marine clerks, a translator of foreign papers, messengers, porters, watchmen, and other officers. There is likewise a separate establishment for the marine service, and a solicitor who also acts for the navy office.

The duty of the *secretaries* is to lay before the board all memorials, letters, and other papers transmitted to this office; to receive and minute down the orders of the lords commissioners, and to see to the official execution thereof; to counter-sign all instruments, where the same may be necessary; and generally to attend to the dispatch of all business arising in the naval or marine department. These officers being constantly resident and always in attendance, their office is extremely laborious: the salary of the first secretary is 4000*l.*, that of the second 2000*l.*

The duty of the *established clerks* is to prepare memorials, instructions, orders, letters, and other instruments, conformable to the minutes of the board, and the direction of the secretaries: each clerk, the junior excepted, has a separate branch of the business under his charge, and is assisted therein by one or more of the extra clerks, according to the degree of labour in the branch assigned to him. The *chief clerk*, besides the charge of one of these branches, has the general superintendence of the whole official business in the naval department. He likewise has the care of the maps, charts, and books of the office, and the payment of most of the contingent expenses. The fourth of the established clerks, besides the duty of his branch, acts as receiver of fees and accountant to the office, and is employed to check the bills of the admiralty messengers. The junior clerk on the establishment, having no branch of the official business assigned to him, acts in the capacity of assistant to the chief clerk. Two of the extra clerks are appointed to assist the secretaries; one of them acts as French and Spanish translator; and they are all employed from time to time in other services, as occasion requires. The attendance of the clerks is daily from ten o'clock or earlier, till five or later if required. They also attend by rotation in the evening, to make up; for ranking, and to dispatch the public letters; and the extra clerks, besides the like daily attendance, are also required to be at the office every evening by turns, to assist in the entry and dispatch of such letters. The chief clerk has for salary 200*l.* per annum, and an addition of 150*l.* during the war, and apartments in the house. The appointments of the other clerks vary from 500*l.* to 150*l.* each, and the extra clerks receive 90*l.* per annum. The secretary to the first lord receives 300*l.*, and the translator 100*l.* a year.

The duty of the *first marine clerk* is to prepare all the memorials,

rials, instructions, drafts of orders, and commissions required for the marine corps; also to examine and check the tradesmen's bills for their cloathing, accoutrements, and contingencies; and his attendance is daily from between twelve and one to about four o'clock.

The duty of the *second marine clerk* is to write all letters relative to the corps, to enter and dispatch the same, as well as the several orders and instructions; also to prepare half yearly lists of the marine half pay officers, and to arrange and take care of the marine papers: and his attendance is daily from about eleven o'clock till past four. The salary of the first is 300*l.* and of the second 150*l.*, with an advance of one fifth in time of war.

The head *messenger*, besides the duty usually belonging to such a situation, has the superintendence of all the inferior departments of the office; and his attendance is constant. The duty of the remaining officers is implied by their titles; and they attend (the housekeeper excepted) whenever their services are required. The salary of the messenger is 120*l.*, those of the others very moderate.

For the purposes of information and utility, connected with naval affairs, the admiralty employ an *hydrographer*, who has an annual salary of 500*l.*; an *assistant hydrographer*; and a *printer* whose stated income is 120*l.*

To this class also may be referred the *telegraph*, which serves for the conveyance of orders to, and receipt of intelligence from, Deal and Portsmouth. The original invention of this mode of communication belongs to the French; but that used by the admiralty is more simple in use, durable, and easily repaired. It occasions a great saving in the expenditure which was formerly made for express, and insures the inestimable advantage in maritime affairs, of celerity in the transmission, and promptitude in the execution of orders. Both the Deal and Portsmouth stations are under the care of an inspector, who has a salary of 200*l.*

Beside the secretaries and two clerks in the marine department, there is an establishment annexed to the admiralty for the *pay of his Majesty's marine forces*. This establishment consists of a paymaster, an agent, and three deputy paymasters, one at each of the out ports.

The duty of these officers is, in conjunction with the treasurer of the navy, to conduct the payment of the marines; the treasurer of the navy paying such of the non-commissioned officers and privates as are on ship board; the paymaster of the marines paying the general and lieutenant-general of that corps; also the half-pay, the cloathing, the charge of recruiting in Ireland, the salaries of most of the civil officers, the allowances

to widows, and several of the contingencies of this service; the agent of the marines paying the subsistence and arrears of all the officers on full pay (the general and lieutenant-general excepted) the charge of the recruiting service in Great Britain, and the contingencies in the different quarters; the deputy paymasters at the several divisions paying the subsistence of the non-commissioned officers and privates, for which purpose they draw bills on the agent, and issue the said subsistence to the squad serjeants once a week, to distribute among the men.

When the marine corps was first established in 1755, under the direction of the board of admiralty, the offices of paymaster and agent were executed by one person, and continued so nearly two years, when they were separated, and an agent appointed for each division; which arrangement existed until 1763, when the number was again reduced to one, and has remained so ever since, not only without any prejudice, but even with benefit to the service.

The paymaster of the marine forces is supplied with money for carrying on the service in the following manner: once a month he presents to the lords of the admiralty an account of his receipts and payments during the former, with an estimate of the sum necessary for the succeeding month. The admiralty direct the navy board to impress a certain sum into his hands, generally about the expenditure of the former month. The navy board direct the treasurer of the navy to issue the money to him accordingly; out of which he advances a certain sum to the agent for carrying on the services under his direction, and applies the remainder to the services carried on by himself, as before mentioned. The agent delivers to the paymaster a monthly account of his receipts and payments, and once a year a general account of the whole, distinguished under proper heads, with the vouchers; from which, and from his own disbursements, the paymaster makes up an annual account, which he presents, with the vouchers, to the navy board for their examination and allowance, which clears him, and is final.

The detail of the paymaster's business is carried on by his first clerk, so as seldom to occasion his attendance; but the agent attends the business of his office both morning and evening without intermission, except for an hour or two in the day. The paymaster has in salary and emoluments about 900*l.* a year; out of which he pays certain salaries and allowances to his clerks, and other expences of his office, and retains the remainder for his own use.

The agent of marines has in salary and emoluments about 600*l.* a year; out of which he pays for clerks and other contingencies nearly 200*l.* a year. The salary of the *deputy paymasters*

masters at the out ports is at the rate of 5*l.* for each company belonging to the division, and amounts to 125*l.* a year at Portsmouth, the same at Plymouth, and 100*l.* a year at Chatham, paid out of the marine poundage and stoppages.

In the admiralty are two other officers; the receiver and comptroller of his majesty's rights and perquisites.

The duty of the *receiver* is to recover and receive for his Majesty's use, all rights and perquisites of the admiralty seized and taken in the time of war, or otherwise; and, also, all such other sums of money as have been usually paid, or ordered by decree of court to be paid to the register for the time being; and to take all such measures as are necessary for this purpose, and observe such orders and directions as he shall from time to time receive from the lords commissioners of the admiralty: and he is to appoint agents at all such ports and places as he shall think necessary. He has a salary of 325*l.* a year nett, and an allowance of 50*l.* more for a clerk.

The duty of the *comptroller* is to take an account of all ships and goods condemned as perquisites of the admiralty, and to note the burthen of such ships, and the quantities and qualities of the goods, together with their tackle, apparel, and furniture; to take an account of all other perquisites of the admiralty, and to compare and examine them with the sums charged by the receiver; to peruse, examine, and controul the accounts of the receiver; and generally to execute such orders and instructions as he shall, from time to time, receive from the lords of the admiralty: and he is likewise to appoint agents at all such ports and places as he shall think necessary. He has in salary and fees 250*l.* a year.

10. SECRETARIES OF STATE. The secretaries of state have an extraordinary trust which renders them very considerable in the eyes both of the king and of the subject. Requests and petitions are for the most part lodged in their hands to be represented to his majesty, and they make dispatches thereupon, pursuant to his directions. They are privy counsellors, and a council is seldom, if ever, held without the presence of one of them; they wait by turns, and one always attends the court, and, by the king's warrant, prepares all bills or letters, not being matter of law, for him to sign. Until the reign of Queen Elizabeth, the secretaries of state were not members of the privy council, but only prepared business for the council board in a room adjoining; which done, they came in and stood one on each hand; and, till they had gone through their proposals, nothing was debated. There was but one secretary of state, till Henry VIII. toward the close of his reign increased the number to two both of equal rank and authority. On the union with

Scotland, Queen Anne added a secretary of state for Scotch affairs; an appointment which was afterwards discontinued. In the reign of his present majesty the number was again increased to three, by appointing one for the American department; but, in the year 1782, this office was abolished by act of parliament.

The business of the secretary of state's office consists in receiving intelligence, conducting correspondence, preparing and issuing warrants, and managing transactions relative to the executive government of the British empire. Such of this business as relates to the British dominions, and to the four states of Barbary, is carried on in the home department, in which there is a subordinate office for the affairs of the colonies. Such, on the other hand, as relates to the foreign powers of Europe, and the United States of America, is carried on in the foreign department.

The establishment of the secretary of state's office in each department consists of a principal secretary of state, two under secretaries, a chief and other clerks, (ten in the home, and nine in the foreign department,) together with two chamber keepers, and a necessary woman.

The *office for plantation affairs*, consists of an under secretary and three clerks. There are likewise attached generally to both departments, the offices of gazette writer, his deputy, a keeper of state papers, a collector and transmitter of state papers, two commissioners for methodizing and digesting the state papers, a secretary for the Latin language, two decyphers, and sixteen messengers.

The duty of the *under secretaries* is to attend to the execution of such orders, to prepare drafts of such special letters and instructions, as occasion may require; to transact themselves, whatever is of the most confidential nature; and generally to superintend the business of the office in all its branches.

The duty of the *chief clerk* is to distribute the ordinary official business among the clerks; to see that all warrants and other instruments are duly prepared, transmitted to the proper persons for signature, and delivered to the respective parties, when application is made, and the regular fees paid for the same; likewise that the office books are properly kept, and the public dispatches punctually transmitted. He further acts as the accountant of the office, in which capacity he receives and accounts for the secretary of state's salary, all the fees and gratuities, together with such other sums as are issued for defraying the general expence of the office.

The remaining clerks, who are distinguished by the rank of
senior

senior and junior in the home department, though without any distinction in the foreign, obey such orders as they receive from their superiors in office, but have no particular branches of business assigned to them.

The attendance of the under secretaries is constant and unremitting; that of the chief clerk's is likewise constant; and the other clerks, though not always employed, are in daily attendance, and are expected to be ready for the execution of any business in which their superiors may think necessary to employ them.

The duty of the other inferior officers is sufficiently expressed by the titles of their offices, and is such as to occasion their constant attendance.

Each of the principal secretaries of state has a salary of 6000*l.*, and the secretary for plantation affairs 2000*l.* The profits of the under secretaries were stated, in 1786, to be nearly 1100*l.* per annum each. A law clerk has 200*l.*, a precis writer, whose duty it is to make an abstract of all dispatches and other communications, has 300*l.*, a librarian 200*l.*, and the clerks and other officers have respectable but not extravagant salaries.

To the office of secretary for the home department, has been annexed, since the French revolution, a branch called the *alien office*, which is under the perpetual controul of the two under secretaries of state, and a person especially appointed for that purpose called the superintendant of aliens. At this office all foreigners are obliged to present themselves when required; to obtain permission to reside in England, which may be modified by such terms as are deemed necessary, and if those conditions are broken, or if any complaint or suspicion arises, the party may be sent out of the kingdom. In this office are a chief clerk, clerk of the passports, and three assistants; and agents are stationed at Dover, Gravesend, Harwich, and Falmouth.

There is also, since the union with Ireland, a department in the secretary of state's office, peculiarly set apart for transacting the affairs of that part of the united kingdom.

The *State Paper Office* belongs alike to those of both secretaries of state. In it are a keeper of state papers, with salary of 500*l.*, a deputy; a gazette writer with 300*l.* a year; a collector and transmitter of state papers, and decyphrer of letters, each 500*l.* a year; a secretary of the Latin language with 280*l.* a year; and an interpreter of Oriental languages. Several of these places are sinecures.

The messengers employed in these offices, thirty-four in number, belong to the establishment of the lord chamberlain's office, and were all under the direction of the clerk of the cheque (an officer specially appointed to put the messengers upon

their respective waits, and to examine their bills of service,) until the year 1772, when sixteen of them were set apart from the rest, to be independent of the clerk of the cheque, and subject solely to the orders of principal secretaries of state. These sixteen are accordingly appointed by the recommendation of, and attend particularly upon, the secretaries of state; nevertheless, they continue on the lord chamberlain's list, and are paid at his office. The messengers attend in rotation, and undertake their journeys in the same manner; the foreign journeys are confined exclusively to the sixteen attached to these offices. Each messenger upon his appointment takes an oath before the clerk of the cheque, for the faithful discharge of his duty. They have each a salary of 45*l.* a year, reduced by deductions to 35*l.* 8*s.*, and seven shillings and sixpence per day, called board wages, while in waiting, and during home journeys, but which ceases when they are dispatched upon foreign journeys; also an allowance of 25*l.* a year for keeping a horse; and are paid besides for the expence of journeys, foreign and domestic, according to certain fixed rates.

The secretary of state for the home department has the custody of the *privy signet*, because the king's private letters are signed with it. There are four clerks of the *privy signet* office, who write out such grants and letters patent as pass by bill signed, or bill superscribed by the sign manual, or under the king's hand; the transcript and sealing of these with the signet is a warrant to the *privy seal*, as the *privy seal* is to the great seal. *A ne exeat regno* may by command be under the *privy signet*, or the *privy seal*, as well as by the king's writ under the great seal, and the subject ought to obey it; but a warrant under the *privy signet* is not sufficient for the issue of any treasure, or the discharge of a debt, much less verbal order; for it ought to be under the great seal, or at least under the *privy seal*. The *signet* office is entirely under the direction of the secretaries of state, a clerk attending the court wherever it may happen to reside, to prepare such bills or letters for signature, as the king may direct, or as may be ordered by warrant from the secretaries of state, or lords of the council. All grants prepared by the clerks of the *signet*, or by the king's counsel learned in the law, for the king's hand, are returned into this office, when signed, and there transcribed again. The transcript is carried to one of the principal secretaries of state, and being sealed by him, it is called a *signet*, which is directed to the lord *privy seal*, and is his warrant for the issuing of a *privy seal*; but *privy seals* for money always begin in the treasury, whence the first warrant issues, counter-signed by the lord treasurer, or the lords commissioners.

II. MASTER GENERAL OF THE ORDNANCE. The office of ordnance is in the tower of London, and has both a civil and a military branch. It supplies both the army and navy with all sorts of military stores. When to the latter, they are delivered *on board the respective ships, to the gunner, who has under him an armourer and a gunsmith.* Storekeepers are established at all the principal sea ports, where any of his Majesty's ships are stationed, both at home and abroad, who receive the stores, from the board of ordnance, where there are clerks and other officers, with salaries, for expediting the business of the army and navy.

The master general, is deemed the principal officer in the civil branch of the ordnance; in him is vested the sole power of storing all the military magazines in the king's dominions, with proper munitions of war; and likewise to supply the royal navy with what they may need in his department, the parliament granting liberal supplies for this purpose. He is colonel in chief of the royal regiment of artillery, and is invested with a peculiar jurisdiction over all engineers employed in the several fortifications in his Majesty's dominions; to him they are all accountable for their proceedings, and from him they receive their particular orders, according to the directions and commands given by the king in council. As master general of the ordnance, he has a salary of 1500*l.* per annum, and the appointment of almost all the inferior officers and servants. He has a secretary, who has a salary of 220*l.* a year, and under secretary, who has a salary of 180*l.* a year. There is a secretary to the board of ordnance, who has a salary of 200*l.* and a counsel to the board, who has an annual fee of 300*l.*

The residue of the establishment consists of a lieutenant general, a surveyor general, a clerk, a storekeeper, a clerk of the deliveries, and a treasurer, with a great number of inferior officers, employed in the tower of London, at Woolwich, and in almost all the forts, garrisons, and principal ports in the British dominions.

The Lieutenant General of the Ordnance receives all orders and warrants signed by the master general, and from the other principal officers, and sees them duly executed; issues orders as the occasions of the state require, and gives directions for discharging the artillery on solemn or joyful occasions. It is also his peculiar office to see the train of artillery, and all its equipage fitted for motion, when ordered to be drawn into the field, or sent on any particular service. As lieutenant general of the ordnance, he has a salary of 1100*l.* per annum. He is colonel *en second* of the royal regiment of artillery, and has a secretary, and several officers and clerks under him.

The Surveyor General inspects the stores and provisions of war, in the custody of the store keeper, and sees that they are ranged and placed in such order, as is most proper for their preservation. He allows all bills of debt, and keeps a check upon all labourers' and artificers' work; sees that the stores received are good and serviceable, duly proved and marked with the king's mark, taking to his assistance the rest of the officers and proof masters. He has a salary of 700*l.* per annum; and to assist in the business, he has under him, the proof master of England, and other inferior officers.

The Clerk of the Ordnance records all orders and instructions, given for the government of the office; all patents and grants; the names of all officers, clerks, artificers, gunners, labourers, &c. who enjoy those grants, or any other fee for the same; draws all estimates for provisions and supplies to be made, and all letters, instructions, commissions, deputations, and contracts for his Majesty's service; makes all bills of imprest, and debentures, for the payment and satisfaction of work done, and provisions received in the said office; all quarter books, for the salaries and allowances of all officers, clerks, &c. belonging to the office; and keeps journals and ledgers of the receipts and returns of his Majesty's stores, to serve as a check between the two accountants of the office, the one for money, and the other for stores. He has 500*l.* a year salary, and 100*l.* a year more for being a check on the store-keeper. In his office he has a number of clerks, under-clerks, and ledger-keepers, who have all fixed salaries.

The Store-keeper takes into his custody all his Majesty's ordnance, munitions, and stores belonging thereto, and indents and puts them in legal security, after they have been surveyed by the surveyor general, any part of which he must not deliver, without a warrant signed by the proper officers; nor must he receive back any stores formerly issued, till they have been reviewed by the surveyor, and registered by the clerk of the ordnance, in the book of remains; and he must take care that whatever is under his custody be kept safe, and in such readiness as to be fit for service on the most sudden demand. He has a salary of 400*l.* a year; and in his office are several clerks.

The Clerk of Deliveries draws all orders for delivery of stores, and sees them duly executed. He also charges by indenture the particular receiver of the stores delivered; and, in order to discharge the storekeeper, registers the copies of all warrants for the deliveries, as well as the proportions delivered. He has a salary of 400*l.* per annua, and has several clerks in his office at fixed salaries.

The Treasurer and Paymaster receives and pays all monies, both

salaries and debentures, in and belonging to this office. He has a salary of 500*l.* per annum. In his office are several clerks, ordinary and extraordinary.

12. SECRETARY AT WAR. This officer may not improperly be styled the minister of the war department. He is, in fact, military secretary to the king, and conveys all his Majesty's orders, to all the generals, and military governors, at home and abroad, relative to the troops and garrisons, under their respective commands; and with him they correspond, and to him they make their returns and reports, (as well as to the commander in chief), and he lays the business before his Majesty, for his inspection, and directions. All orders for marching, quartering, encamping, and recruiting the army, are signed by him, by his Majesty's command; and all military commissions are made out at the war office, situate at the Horse Guards, Whitehall, and by him, or the commander in chief, carried to his Majesty to be signed. The trust reposed in this officer is very great, and the profits of his office are considerable; he is always a member of the privy council.

In the war office, are a deputy secretary and first clerk, four principal, and many subordinate clerks, a paymaster of widows' pensions, who has 100*l.* per annum, and a deputy; an examiner of army accounts, with assistants, messengers, and other officers.

13. THE PAY MASTER GENERAL OF THE FORCES. This office was one of the most lucrative in his Majesty's gift, not so much from his salary, (which was only 3000*l.* a year), and the perquisites of office, as from the immense sums of public money which necessarily remained in his possession, for a long space of time; as all the money voted by parliament for the land forces passed through his hands, and the balance was not paid into the treasury until his accounts were settled. In the year 1782, this office underwent a reform, and the pay master general, deprived of this and all other extraneous sources of emolument, was allowed a fixed salary of 4000*l.* and his deputy of 1500*l.* per annum.

The pay master general, is constituted by letters patent, under the great seal, and is always of the privy council. It has not been unusual, of late years, to appoint two persons to this office, as joint paymasters, in which case the salary is not augmented but divided.

The principal persons in the pay office, besides the deputy or deputies, for this office too is divided, are the accountant general, who has 1200*l.* per annum, and an assistant; the cashier 1000*l.* an assistant ledger keeper 800*l.* an assistant cashier of half pay 700*l.* and computer of off-reckonings 600*l.* There are besides many clerks and other persons in subordinate employments.

14. POSTMASTER

14. **POSTMASTER GENERAL.** Before any account is given of the particular duties of this officer, it will be proper to notice the origin, and other circumstances attending the establishment, over which he presides.

The necessity and advantage of a speedy and secure conveyance of letters to all parts of a state, and to foreign countries, must at all times have been sensibly felt by every government, and when once the ruling power had contrived an establishment, calculated to produce those effects, it would inevitably follow, that, if the country were free and prosperous, the nobility, the men of property, and above all, the commercial part of the community, would obtain the same benefits, either by participation, or by rivalry. The conveyance of letters, either of business or kindness, by the tardy, insecure, and uncertain mode of ordinary or accidental travellers, or even of persons employed on purpose, unless adequate provision were made for their speed and protection, must from the early periods of civilization, have been felt as a serious inconvenience. In England it was remedied, at first by provisions expensive to government; subsequent improvements removed the defects of the first contrivance; a judicious establishment obviated uncertainty in the effect, and the danger arising from injudicious rivalry; experienced utility, procuring general favour, shewed a dawn of profit to the state, and finally, the vigilance of the financier, aided by the ingenuity of sagacious projectors, converted that which had been originally a burden, into a most fruitful, secure, and popular source of revenue.

To travel post (*currere equis positis*) must have been usual in England, from the time when the effect of her admirable laws began to render the roads secure, and to afford at once protection and encouragement to those, whom business or pleasure led to visit places distant from their own abodes; but the first recorded instance of an attempt to apply the benefits of such a mode of journeying to the conveyance of letters occurs in 1479, when Edward IV. introduced an establishment of riders, with post horses, to be changed every twenty miles; who by handing letters from one to another, in two days forwarded them two hundred miles, apparently the furthest extent of the plan; but this improved mode of conveyance, like that in France, from which it was copied, had no connexion with commerce or public accommodation, unless it may be considered as the first rudiment of the present establishment. In the reign of Henry VIII. anno 1543, it is recorded, that letters dispatched from London reached Edinburgh on the fourth day; a degree of speed nearly equal to that of modern times, but this was only effected by means of a temporary arrangement, made for the use of government.

A foreign

A foreign post was originally established by the alien merchants, residing in London, who claimed the right of electing a person, in whom they could confide, to direct the undertaking. As the business grew extensive, the election became a source of discord, which occasioning many feuds, the citizens of London, in 1568, requested queen Elizabeth to assign that duty to one of her English subjects. This petition does not seem to have been attended with immediate effect, for the first regular nomination of a post-master, on record, was made by James I. who conferred that title on Matthew de Quesler, or de l'Equester; but this was only for foreign letters; and after that period, as well as before, the business occasionally fell into the hands of private undertakers. In 1631, Charles I. granted by patent the reversion of the foreign post office to William Frizell and Thomas Witherings, and strictly enjoined, that none but his foreign post masters should presume to exercise any part of that office. In 1635, the same monarch, observing that there had been no certain intercourse between the kingdoms of England and Scotland, issued a proclamation, commanding his post-master of England for foreign parts to settle a running post, or two, to run night and day between Edinburgh and London; to go and return in six days, and to take with them all such letters as should be directed to any post town in or near that road; and that bye-posts should be placed at several places out of the road, to bring in and carry out the letters from and to Lincoln, Hull, and other places. The like rule was also to be observed to West Chester, Holyhead, and thence to Ireland; also to Plymouth, Exeter, and other places on the west road: and as soon as possible the like conveyance to be settled for Oxford, Bristol, and other towns in that direction; also to Colchester, Norwich, and divers other places on that road. The same proclamation settled the price for conveyance of letters, and for the hire of horses for that purpose, and ordained that no other messengers, nor any foot posts should carry letters, except to places where the king's post did not go. This part of the edict being frequently evaded, new proclamations were issued to enforce it, and the undertaking was in a state of some prosperity before the commencement of the civil war, which terminated in the murder of Charles I. The well conducting of this post had already engaged the vigilance of government; Witherings was superseded for abuses in the execution of his office, which was confided to Peter Burlamachy, to be exercised under the controul of the secretary of state. The civil war, in course, impeded the operations of the post, but when that was terminated, the protector and parliament, in 1656, erected a new general post office, which was formed by the same person who held the contract during

during the life of the king. The prosperity of the plan probably incited the merchants of London to attempt one in opposition, but they were restrained by a vote of the house of commons; and the ordinance made during the republican government, states, that the establishing one general post office, besides the benefit to commerce, and the convenience of conveying public dispatches, "will be the best means to discover and prevent "many dangerous and wicked designs against the common-
"wealth."

Such was the origin of this most important and beneficial establishment, the succeeding efforts of legislation being confined to the regulation of its operations, the extension of its utility, and the augmentation of its profits. Omitting the tedious and uninteresting details of intermediate attempts, it is highly necessary to notice the great amendment introduced in 1783, by adopting the plan of reform and improvement, invented by John Palmer Esq. and carried into effect by his great ability and persevering industry, so necessary in all reforms, which oppose the prejudices of long habit. From an undeviating adherence to an established system, and the accumulation of indulgences and abuses, the post office had fallen into a state of general mismanagement in itself, and the revenue was injured, while the public suffered many inconveniences from these causes, as well as from the incorrect and injudicious system practised in the inland department of the office. The plan of conveying and distributing letters, having been unvaried for upwards of a century, the post, instead of being the most safe and expeditious, was become the most insecure and tardy conveyance in the kingdom; the mails being intrusted to boys, who were mounted on bad horses, incapable of defending themselves, were often plundered. Hence it happened, that, in defiance of every law that could be devised for preventing it, many persons preferred sending, at a very advanced price, their letters, by any of the numerous vehicles, which the improved state of the turnpike roads enabled to travel with expedition, and which were defended by guards constantly attending and well armed. Comparing the dispatch used by the vehicles called diligences, with that which could be effected by the mail, and which considerably exceeded the proportion of two to one, Mr. Palmer rationally dismissed every thought of cramping private enterprise by prohibitions, against which the necessities of every class in the community must have been perpetually struggling, and recommended, that government should take advantage of the facilities which the advanced state of the country presented, and make contracts with the proprietors of the diligences for conveying the government mails. The train of reasoning which he pursued on the whole of this subject was plain,

plain, rational, and convincing; he shewed the best mode of insuring the punctual performance of the contracts, the precise observance of fixed times for arrivals, and the faithful escort of guards. His project embraced also the means of increasing the revenue, and diminishing the expence of the new project, by exempting the mail carriages from payment of turnpikes; a heavy tax perhaps on the proprietors of the roads, but an extraordinary saving to the nation at large.

Besides a proposition for regulating the privilege of franking, which was adopted and extended, Mr. Palmer's plan embraced and accomplished a salutary reform throughout the interior of the office: a reform beneficial to the clerks and persons employed, who previously suffered in their health from the nature of their duties, and highly advantageous to the public. Since the establishment of Mr. Palmer's system, expedition, security, punctuality, and facility in transacting business, have been the characteristics of the post-office of this kingdom. The time of making up the bags, seven in the evening, instead of midnight as it was before, has produced, perhaps, more than could be expected, a radical change in the arrangements of life; a long busy morning, being now succeeded by a late dinner, and a convivial evening, instead of the system which formerly prevailed, particularly on post nights, of making the most pressing exertions at a late hour, to forward those letters, which would else perhaps be delayed for several days.

The revenue of the post-office is at this time very considerable, and perhaps now is paid with greater pleasure, or collected with less difficulty. In fact, the payment of postage is not a tax, but a moderate compensation for an essential service; it is the only one which remains of the numerous monopolies, formerly in the power of the crown. The amount of this revenue, always progressive, has been in the last few years exceedingly extended by judicious management, and by occasional additions to the charge of postage. The progress of improvement since the first establishment of the post-office cannot be clearly ascertained, because the records of the early expenditure are not preserved, so as to afford means of calculating the net produce; and of late years, the increased commerce of the country has caused a prodigious augmentation in the expence of packets, which is charged on the gross receipt of the post-office. Yet some estimate of its progress may be formed from the following statement of the sums rendered, either nett or gross at different periods.

In 1652, the revenue was farmed at 10,000*l.* before which government paid to the post-master for a weekly conveyance of letters, 7000*l.* per annum.

In 1663, the office was farmed at 21,000*l*.

In 1685, the revenue was estimated at 65,000*l*.; but probably this was too high, since in four years long afterward, 1707-10, the average was but 58,052*l*.; the gross amount in 1710, being 111,462*l*.

In 1711, the rates being somewhat increased, the revenue was on an average of four years, 90,223*l*.

In 1722, the gross amount was 201,804*l*. the net produce 98,010*l*.

In 1755, the gross amount was 210,663*l*.

In 1765, regulations having been made with respect to franking, the gross amount increased to 281,535*l*.

In 1775, it was 345,321*l*.

In the years next noticed, the gross and and net produce are given, and each of them till 1803, is to be taken ascending on the fifth of April.

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1783, gross produce	416,668	nett	159,858
1784, (postage being increased)	438,734	—	197,655
1790,	548,967	—	327,634
1795, (franking restricted)	745,238	—	414,548
1796, (postage again increased)	811,539	—	479,487
1799,	1,012,731	—	657,388
1800,	1,083,950	—	720,981
1801,	1,144,900	—	755,299
1802,	1,289,197	—	880,069
1803, (year ending 5th Jan.) *	1,319,118	—	947,010
1804,	1,320,585	—	924,839
1805, (partly by estimate)	1,343,180	—	942,846

In these years it will be observed, that the revenue of the post-office has been continually progressive, even when the rates of postage were not increasing; the expences, however, have been occasionally augmented by inevitable circumstances, such as war, which occasioned the capture of packets, and an advance in the wages of sailors; and scarcity, which obliged government to enlarge the allowance to the masters of mail coaches, on account of the advance in the price of horse provender.

To produce this, almost incredible augmentation of revenue, no real hardship has been imposed on the subject; on the contrary, postage is one of the few objects of long established emolument to the state, in which the necessities of succeeding times have not effected a great change. The first imposition of postage, in 1635, was rather injudicious than moderate. It was twopence for distances not reaching eighty miles; from eighty to a hundred and forty, the sum of fourpence; above one hundred and forty, without further discrimination, sixpence;

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in England, and on the borders of, and in Scotland, eightpence. It appears that these charges were not considered moderate, since in 1656, they were reduced; letters not to be carried eighty miles, paying twopence; all beyond, without discrimination, threepence; and to Scotland, fourpence. This, too, was at a time, when the office was farmed, and the merchants considered that a rival establishment would be a promising speculation. In 1710, the rates were advanced by the addition of one penny, on the lower description of letters. In 1765, they were new modelled, in the hope of counteracting the disadvantages then attending post-office conveyance, by extraordinary cheapness; a letter then paid for one stage, one penny; for two stages, twopence; for any distance exceeding two stages, and within eighty miles, threepence; beyond eighty miles, if in England, fourpence; and to Edinburgh, sixpence. These rates were too low to afford any considerable revenue, except by a parsimony, destructive of the main objects of the service, and by a monopoly, which would leave the public abundant reason to regret, that they were not at liberty to purchase at a higher price, speed, punctuality, and security. The modern rates are considerably advanced; but the profit is obtained by deserting the absurd limitation of never charging beyond a certain sum, whatever might be the distance, and adding to the postage, as in reason ought to be added, progressively according to the distance. But assuming the distance which seems generally to have formed a medium, eighty miles; this was in 1635, charged fourpence; and in 1656, reduced to threepence; it is now eightpence. If the relative value of money alone were considered, eightpence in these times bears no proportion to the fourpence, or even the threepence, then imposed, and the charge of postage is at that distance, really much lighter than it was then; but comparing the present dispatch of a daily, with that which was then allowed, a weekly conveyance; taking into consideration the difference between the present expences, and that which was then incurred, of twopence halfpenny per mile, for boy and horse, and it must be obvious that the brilliant revenue above described, is owing to the increased commercial activity of the nation, and the judicious system of management alone, and not to any extortion or imposition on the people.

A small deduction from the profits of the post-office has always existed, in consequence of the privilege claimed by members of both houses of parliament, and granted to certain officers of state, of sending and receiving letters free of expence, or, as it is termed, *franking*. This privilege in members of parliament was, at first, rather a demand founded on the

implied duties of their station, than a right established by any defined principle; and there were not wanting many independent minds, who contemned it altogether as a reservation unworthy of their exalted rank. When a bill was brought in, soon after the restoration, in December 1660, for the settlement of the post-office, Colonel Titus having reported it to the house of Commons with amendments, Sir Walter Earle delivered a proviso for the letters of all members of parliament to go free, *during their sitting*. Sir Heneage Finch said, *It was a poor mendicant proviso, and below the honour of the house*. Mr. Prynne spoke also against the proviso.—Mr. Bunckley, Mr. Boscawen, Sir George Downing, and Serjeant Charlton for it: the latter, saying, “The council’s letters went free.”—The question being called for, the Speaker, Sir Harbottle Grimstone, was unwilling to put it, saying, *he was ashamed of it*, nevertheless, the proviso was carried, and made part of the bill, which was ordered to be ingrossed. The lords, however, struck out the clause, and the lower house, in this, among other instances, passed a bill of supply as amended by the peers.

The privilege of franking consequently stood on its old foundation of assumed claim, but it was guaranteed by the King’s promise of perpetual allowance, and accordingly a warrant was constantly issued to the Post Master General, directing the allowance to the extent of two ounces in weight for each letter, and without limitation as to number. The right was, however, considered to be so firmly established, that in March 1735, the house of commons passed a resolution, declaring that the privilege of franking letters by the knights, citizens, and burgesses, chosen to represent the commons in parliament, began with the erecting of a post-office within this kingdom, by act of parliament: and that all letters, not exceeding two ounces, signed by, or directed to, any member of the house, during the sitting of every session of parliament, and forty days before, and forty days after every summons or prorogation, ought to be carried and delivered freely, and from all parts of Great Britain and Ireland, without any charge of postage.

In process of time, this licence was abused to a most dangerous extent; for as nothing more than the name of a member at the corner of the cover was necessary, to pass a letter free of postage to any part of the country, to which the sender thought fit to address it, these signatures, given with inexcusable facility, at length became so numerous, as even to be publicly sold. The average amount of payment thus deducted from the revenue was stated at 170,000*l.* per annum. On this occasion, in 1764, the commons resolved, that certain regulations should

be adopted with regard to members of their house, and the lords forming a similar resolution, a bill was framed for the correction of abuses, and establishment of regulations. The right of franking having thus, by voluntary concession of both houses, become an object of statute law, has since been further restricted by various acts of parliament, so that no member can now frank more than ten, nor receive more than fifteen letters in one day, free of cost, and the weight is limited to one ounce each. Nor will any letter go free, unless the member shall write the whole of the superscription, and shall add his own name, and that of the post town from which the letter is intended to be sent, and the day of the month in words at length, besides the year, which may be in figures; and unless the letter shall be put into the post-office of the place, so that it may be sent on the day upon which it is dated. And no letter shall go free, directed to a member of either house, unless it is directed to him where he shall actually be at the delivery thereof; or to his residence in London, or to the lobby of his house of parliament. Certain officers of state have a power of franking, unlimited, either as to number or weight. Printed votes and proceedings of parliament, and newspapers, are allowed to be sent in open covers, signed by, or directed to, members of parliament, at the places whereof they give notice at the post-office. The non-commissioned officers, seamen, and private soldiers, actually on service in the navy, army, militia, fencibles, artillery, and marines, may send single letters, if signed on their back by their commanding officers, to any place, on paying one penny; and they may also receive their letters from any place, on paying the same low postage, and covers, open at the sides, inclosing patterns of cloths, silks, stuffs, &c. and containing no writing but the address of the sender, and the prices of the goods, are allowed to go for single postage.

A branch of duty and emolument connected with the situation of post master, is the establishment for conveyance of letters and parcels from one part of the metropolis to another, and to a distance not exceeding ten miles from London, formerly called the *penney post*; now the *twopenny post*. The origin of this undertaking is involved in some obscurity. It commenced about the year 1683, and is said to have been invented by an upholsterer, named Murray, who sold it to Mr. Dockwra, a gentleman of Hertfordshire, though some consider Mr. Dockwra to have been the original projector. Under him it was successfully conducted for several years, till it was claimed by government, as connected, and interfering with the revenue due to the crown from the post-office, to which it was therefore united, and as a compensation, a pension of 200*l.* was allowed to Mr.

Docwra for life; but even of this fact there are some doubts. Parliament did not take cognizance of it till 1711, when general regulations respecting the post-office were made; in subsequent sessions the price of letters delivered beyond the precincts of the metropolis, or, as it is usually termed, off the stones, was augmented, and in 1765, the post master general was empowered to make a similar establishment, in any town in the British dominions. As the office is now established, letters, and parcels, not exceeding in weight four ounces, are conveyed from any part of the metropolis to any other part for twopence, and to or from any part of the country to which the limits extend, for threepence, payable either by the party sending or receiving: great improvements have been effected with respect to speed and certainty, and the profits are added to the general post revenue.

Thus is the communication between persons in all parts of the kingdom secured and facilitated; for the detached settlements in all parts of the globe, and for foreign correspondence, packets are established, and departments are assigned in the post office for transacting these branches of business.

The law too has made provision for the security, and, as much as is consistent with the public safety, the secrecy of this conveyance; for although, by a warrant from one of the principal secretaries of state, letters may be detained and opened; yet any person employed in the post office wilfully detaining or opening a letter, without such authority, forfeits 20*l.* and is incapable of having any future employment in the office. By the statute, 7 Geo. III. c. 57. any person in the service of the post office embezzling or destroying any letter, containing any valuable paper, or picking out such valuable paper, is deemed guilty of felony, and condemned to suffer death without benefit of clergy. And the robbery of the mail, or of a post office, is subjected to the same penalty. It is also enacted, 34 Geo. III. sess. 2. c. 37, that if any person shall fraudulently counterfeit, or alter the superscription of any person entitled to frank letters, he shall be guilty of felony, and shall be transported for seven years. It is however to be observed as the consequence of repeated decisions in courts of law, that the post master is not, like a common carrier, responsible for any property which may be lost or stolen from letters put into the office.

On the present establishment of the general post office, the office of his Majesty's post master general is vested in, and executed by two persons, with a secretary and six clerks, a principal and resident surveyor, seven riding surveyors, a receiver general, accountant general, a surveyor and superintendent of mail coaches, with various clerks and assistants.

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In the inland department, are a superintending president, with inferior and vice presidents, eighteen senior clerks, and eighteen assistants, twenty junior clerks, from whom are selected five inspectors of franks, &c.; four established, and fourteen supernumerary messengers, a housekeeper and chamber keeper to the post master general, an inspector of inland carriers, and two assistants; 110 established, and sixteen supernumerary letter carriers, and eighteen of the established letter carriers act likewise as sorters.

The foreign department has a comptroller, and his deputy, and various clerks, a messenger, and letter carriers.

There is also an accountant for bye and cross road letters, with four clerks, and an office keeper. There are a comptroller, a collector and accountant for the twopenny post office, with various sorters and office men, and upwards of two hundred and fifty town and country letter carriers, and seven supernumeraries.

There are agents for the packet boats at Harwich, Holyhead, Falmouth, Milford, Weymouth, Lisbon, Gottenburgh, and Cuxhaven, and upwards of seven hundred deputy post masters, &c. at home and abroad.

Unlike to other boards of revenue, the post office is charged with the performance of most extensive and complicated services in the nature of a carrying trade, dependant for its profits on great advances and continual disbursements.

Not less than 54 sail of vessels, from 180 tons, down to 50 tons burthen, are constantly employed in the service, for the benefit of the commercial interest of the empire, and for the correspondence of his Majesty's government; and these packets are navigated with 1057 officers and seamen.

There are 61 mail coaches, which run upon an average 10,000 miles a day, and require at least 4000 horses, and 200 guards, to be kept for that service. It is true, that the economical principles on which the contracts for those coaches are formed, leaving to the contractors the profit of passengers and parcels, do not require that all the horses employed should be bought and kept solely at the public expence.

The mails which are forwarded in carts and on horseback, are conveyed upwards of 4,000 miles a day at the lowest computation, and many men and horses are occupied at the expence of the post office revenue in that part of the service.

Upwards of 1000 persons are employed as officers, sorters, messengers, letter carriers, receivers of letters, and servants in the inland, foreign, and twopenny post departments of the office; and there are nearly four thousand persons engaged in Great Britain, in carrying on the immense business of the

office, in forwarding and receiving letters, and in collecting the amount of postage arising from them.

*The duty of the Post Master General is to superintend and regulate inland posts in all parts of Great Britain, and to and from any part of his Majesty's plantations; to obey and perform all such rules, instructions, orders, and directions, in relation to the revenue of his office, as he shall receive under the King's sign manual; and touching the management, ordering, and government of the revenue in the office, he is to observe the orders and directions which the commissioners of the treasury think fit and necessary for the service. The salary of the joint post master general is 5000*l*.*

The duty of the *Secretary* is, under the direction of the postmaster general, to superintend the whole business of the office, in all its complicated branches, to carry on the official correspondence, to attend the board, take minutes of the proceedings and to give directions for carrying into execution the orders of the postmaster general: his attendance is constant, and at all hours when required. The person who now executes this office, from his peculiar knowledge of all the posts of the kingdom, acquired by his active and extensive agency, under Mr. Palmer, at the outset, and in the progress of his admirable plan, also holds the office of resident surveyor, and in this capacity has to direct the management of the various post offices, and proper conveyance of the mails all over the kingdom, to correspond with, and give directions to the several riding surveyors, and deputy postmasters, and to all persons who are employed in the conveyance, sorting and delivery of letters; to receive and determine, with the approbation of the postmaster general, upon all representations or applications for establishing new posts, or alterations in those already established, to report to the board the advantages or disadvantages, that, in his opinion, might probably arise to correspondence, or the revenue, from such alterations or establishments; to consider and report upon all petitions from deputy postmasters for increase of salaries for office duty, or for allowances for riding work; to attend to and redress all complaints of irregularity in the persons employed in the several departments; to regulate the mode of conducting the business in general, and of stating the accounts of the deputy postmasters, both for their salary and riding work. His salary is 1200*l*. per annum, a house in the office, and the privilege of franking newspapers and periodical publications to the West Indies and America.

The duty of the *Chief Clerk* is, to assist the secretary in carrying on the general correspondence of the office; to prepare fair drafts of the board's minutes; to enter all remittances on ac-

count of the revenue, from the country postmasters, or from the postmasters and agents abroad, and in the absence of the *secretary to acknowledge the receipt of them to the parties, and to deliver such remittances to the accountant or receiver general, and take their acknowledgment for the same; and generally to assist in all the business of the secretary's department.* His attendance is constant and at all hours. His salary and emoluments are nearly 600*l.* per annum.

The duty of *Superintendent of Mail Coaches* is to contract for the conveyance of the mails all over Great Britain, to attend that they be properly guarded, and generally to superintend all the duties relative to the mail coaches, to see that proper and correct way bills are provided for all the roads and branches, and to fix, as near as possible, the time necessary for the performance of each stage, &c. &c. His attendance is constant, and the performance of the duties of his office occupy his whole time. His salary is 700*l.*

The duty of the *Riding Surveyors* is, to inspect into the management of the country post offices; and to instruct the several deputies how to sort, tax, charge, and circulate, the letters received at their offices, to check and report to the board, any impropriety in their conduct; to endeavour to detect all coachmen, carriers and others, who shall collect, carry or deliver, any letters or packets contrary to law; and when any alteration is made in the course of the post, or new branches established in their districts, to direct and regulate the operations. Their attendance is as occasion may require, in town or country. One of them has a salary of 400*l.* a year, and chaise hire; the others have each a salary of 150*l.* a year, and an allowance of 26*s.* per day when travelling.

The duty of the *Receiver General* is, to receive and pay all monies appertaining to the revenue of the post office, to keep accounts thereof and transmit an annual statement of the same, attested by him, to the office of the commissioners for auditing public accounts, for their examination. He pays into the exchequer 3000*l.* every week, pursuant to act of parliament, and at the end of each week the balance remaining, in his hands, reserving, however, so much as may be necessary to answer incidental payments in consequence of the postmaster general's warrants. He gives security to the amount of 10,000*l.* himself in 5,000*l.* and two sureties in 2,500*l.* each; he has a salary of 800*l.* and under him five clerks, the chief of whom has a salary of 500*l.* a year.

The duty of the *Accountant General* is, to attend that all accounts, relative to the revenue of the post office, are properly kept and stated in his office; to keep a weekly checque on the receiver

general, to examine, sign, and transmit the deputy postmaster's quarterly accounts; to examine and sign tradesmen's bills, the solicitors and other bills for services performed, packet warrants, &c. to examine, sign, and attest, the annual general account of this revenue, and the annual cash account, and transmit both to the auditor's office. He has a salary of 700*l.* a year. His deputy assists in examining and stating all these accounts, and superintends the business performed by the clerks; his salary is 500*l.* a year, and there are five clerks in this office.

The *Superintending President* of the inland office, is to see that all the officers, clerks, sorters, and letter carriers, attend at the proper hours for dispatch of business, and to keep them to their duty; to receive the charge of every mail from the sorters, to compare such charge with that reported to him by the letter carriers, and deliver the same to the receiver general, that he may obtain the amount from each letter carrier.

There are in this office six clerks of the roads, namely, West, Bristol, Chester, North, Yarmouth, and Kent, each of whom has 300*l.* a year, and the privilege of franking newspapers on their respective roads. Their assistants, sorters, and other subordinate agents have moderate salaries, which increase as vacancies occur, till they may reach from 70*l.* to 300*l.*

The duty of the *Comptroller of the Foreign Office* is to superintend the whole business of the office, and to see that every officer and letter carrier does his duty, in sorting, taxing, and delivery of the letters by the foreign mails; to charge the window men and letter carriers with the amount of the letters given them for delivery; to transmit weekly a bill thereof, together with an account of the money received at the window on post nights, to the receiver general, and a copy thereof to the accountant general, to keep an account of letters sent and received to and from the post offices abroad, to take care of letters which come registered from abroad, and on which a fee is received; and to examine the quarterly and general accounts from Hamburgh and Bremen. His attendance is constant on account of the uncertainty of the arrival of the mails. He has no salary, but is paid for his public services by the privilege of franking newspapers to foreign parts.

The *Deputy Comptroller* is to assist the comptroller in the general business of the office; he attends the sorting and dispatch of the letters by the mails of the night; he has the care of registering all packets of value sent, and remains in the office until the mail is dispatched, and the whole business finished. His attendance is constant, being obliged to be always in waiting for the arrival of the mails when any are due. His salary is 250*l.* with a privilege of franking newspapers to foreign

foreign parts. There are in this office fourteen clerks, with salaries from 70*l.* to 120*l.*, a messenger, an inspector, and twenty letter carriers.

Subordinate to these general departments are the *dead and missent letter office*, the inspector of which has a salary of 400*l.* together with an assistant and six clerks; the office of *accountant for bye and cross roads letters*, with four clerks; the accountant's salary is 250*l.* There is also a *ship letter office* for letters sent and received by private ships, with an inspector, at a salary of 280*l.* and two clerks.

The solicitor, whose business it is to commence, carry on, and defend all actions that concern the revenue of the office, to conduct all criminal prosecutions, prepare bonds from every person appointed to offices under the post master general, and register the names and residence of their sureties, and in general to execute all law business relative to the post office, has an annual fee of 300*l.*; and there is an architect and surveyor, who receives annually 150*l.*

The *two penny post*, under a late regulation, is made in the abstract to conform as nearly as possible to the general post office. It has in the metropolis two principal offices, one in Lombard-street, connected with the superior establishment, the other in Gerrard Street, Soho Square. The chief officers, as before observed, are the comptroller, accomptant, and collector.

The *Comptroller* superintends the duties performed by the several officers, clerks, and letter carriers, in sorting, telling, taxing, and delivering letters. His salary is 500*l.*

The duty of the *accountant* is to keep an account of the receipts at the several receiving houses, which are chequed at the chief office, and at stated periods, he makes out tickets for the collector of the money received by each during that period, deducting from the amount one penny in every ten, which is the allowance to the receivers for their trouble, and strikes the clear balance to be received from each; and delivers in the charge to the collector: He also makes out a yearly account of the whole, which is signed by him, and by which he checks the annual amount of the collector. His salary is 400*l.*

The duty of the *Collector* is to receive the money collected by the letter receivers, window men, and letter carriers in this department; to pay the salaries, wages, and other disbursements appertaining to this office, paying the net balance every week to the receiver general, reserving only in his hands a very small part for current expences; at the end of the year he makes out a general account of his receipts and payments, and strikes a balance, which account is examined and signed by him, and afterwards

afterwards authenticated by the signature of the post master general; the collector then attests the account, and delivers it with the vouchers into the office of the commissioners for auditing the public accounts. He gives security in the sum of 2,000*l.* with two sureties; his attendance is constant, and his salary is 150*l.* He has in this department two sub-collectors, with salaries of 110*l.* and 100*l.*

There are also in the office four principal clerks, window men, sorters, inspectors of dead letters, and stampers.

The deputy post masters at home and abroad are very numerous, being between 7 and 800.

The packets and other charges attending the conveyance of letters to the colonies and to foreign countries are also very heavy, but the service is performed with great precision and dispatch.

The agents established are as follow:—

At Dover, to receive and forward the French and Flanders mails;

Harwich, to receive and forward the mails, and other public dispatches, to and from Holland, and the northern parts of Europe; and

Falmouth, to receive and forward the public dispatches to and from Lisbon, the West India Islands, and America; to muster the men on board the packets before they sail, and on their arrival; to send copies of the musters to the post master general; to keep a journal, and report daily to the board, a state of the winds and weather, of the arrival and sailing of each packet, the names and condition of those in the harbour, and to transmit the same every post to the post master general; also of the number of mails at Falmouth; to keep an account of all money received for freight or passage; to pay the necessary disbursements, send an account of the same to the post master general at the end of every quarter, attested on oath; and generally to superintend and direct the commanders according to the orders he receives from the board.

15. THE TREASURER OF THE NAVY, is also a distinguished officer of government, but as the business of the offices with which he is connected relates to the details of the naval service, a description of his duties is reserved till the navy is expressly under consideration.

EMBASSADORS —Although these persons are not properly within the description of officers, whose council is supposed to assist, or whose responsibility is engaged in the transactions of, the cabinet, still the information they convey, and the correspondence they maintain in various directions, form the grounds of many decisions which they influence more effectually than they

they could by their votes. Of these officers it may be fit first to take notice, as they are established by the general law of all civilized people, and next, as they are particularly protected by the law of England. A brief account is also added of some other ministers of inferior degree, employed in the correspondence between nations.

It is necessary, that nations should hold intercourse together, in order to promote their interests, to avoid injuring each other, and to adjust and terminate their disputes. But nations, or sovereign states, do not treat together immediately; and their rulers or sovereigns cannot well come to a personal conference in order to treat of their affairs. Such interviews would often be impracticable; and, exclusive of delays, trouble, expence, and many other inconveniences, it is rarely, that any good effect could be expected from them. The only expedient, therefore, which remains for nations and sovereigns, is to communicate and negotiate by the agency of delegates charged with their commands, and vested with their powers, that is to say, public ministers. These, every sovereign state has a right to send and receive; nay, princes or communities not possessed of sovereign power, may enjoy the right by the constitution of the state, the concession of the sovereign, or by reservations which the subjects have made with him. For where the members of any general union have retained separate and independant rights of sovereignty, such as those of granting succours of troops, or contracting alliances, it seems necessarily to follow that they must also have the power of appointing and receiving ambassadors, or other ministers, for the adjustment and maintenance of treaties on those important points. Sometimes, this power has been delegated to viceroys, or chief governors of extensive provinces; during an interregnum it reverts to the nation, or devolves on those whom the law has invested with the regency of the state; a sovereign who attempts to hinder another from receiving or sending public ministers, offends against the law of nations; and so essentially is this right interwoven with that of sovereignty *de facto*, that if the ambassador of an usurper is received, the legal prince, if restored, has no right to complain of it as an injury or disrespect to himself. A sovereign cannot, with propriety, refuse to receive the minister of a friendly state, though he may, if he sees cause, object to his long residence in his dominions.

The ambassador is a minister of the first rank, his appointment places him above all other ministers, who are not invested with the same character, and precludes their entering into competition with him. At present, there are ambassadors *ordinary* and *extraordinary*; but this is no more than an accidental distinction;

distinction, merely relative to the subject of their mission. The peculiar honours paid to ambassadors, depend entirely on custom; but in general, they are entitled to those civilities and distinctions, which the usage and prevailing manners of the times have pointed out as proper expressions of the respect due to the representative of the sovereign; and when a practice is so established, as to impart, according to the usages and manners of the age, a real value and a settled signification to things in their own nature indifferent, it is necessary to act with respect to such things, as if they really possessed all that value which the opinion of mankind has annexed to them. For instance, according to the general usage of all Europe, it is the peculiar prerogative of an ambassador to wear his hat in the presence of the prince to whom he is sent. This right expresses that he is acknowledged as the representative of a sovereign; to refuse it therefore to the ambassador of a state, which is truly independent, would be doing an injury to that state, and, in some measure, degrading it. The ceremonials of public deference must be regulated by this principle, for the honour of a nation would be sensibly wounded by a slight shewn to its ambassador, and an offence so given would be a proof of wanton contumely, or inconsiderate rashness.

The respect due to sovereigns should redound to their representatives, and especially to their ambassadors. Whoever offends or insults a public minister, endangers his country and his sovereign, and should therefore be punished with severity; and the state, at the expence of the delinquent, should give full satisfaction to the sovereign who has been offended in the person of his minister. If the foreign minister is himself the aggressor, the citizen may oppose him, without departing from the respect due to his character, and may prefer a complaint to his own sovereign, who will demand for him an adequate satisfaction from the minister's master; but he must not entertain those thoughts of revenge which the point of honour might suggest, although they should in other respects be deemed allowable. Even according to the maxims of the world, a gentleman is not disgraced by an affront for which it is not in his own power to procure satisfaction.

The necessity and right of embassies being established, the perfect security and inviolability of ambassadors and other ministers is a certain consequence of it: for if their persons be not protected from violence of every kind, the right of embassy becomes precarious, and the success very uncertain. Whoever offers violence to any ambassador, or to any other public minister, not only injures the sovereign whom that minister represents, but also attacks the common safety and well-being

well-being of nations: he becomes guilty of an atrocious crime against mankind in general. This safety is particularly due to the minister from the sovereign to whom he is sent, who by admitting and acknowledging him, engages for his protection and safety. This duty extends beyond the protection due to persons in general, resident within his dominions; an act of violence committed on one of them is an ordinary transgression, which, according to circumstances, the prince may pardon; but if done to a public minister, it is an offence against the law of nations, to be pardoned only by him who has been offended in the person of his representative.

Although the minister's character is not displayed in its full extent, and does not thus ensure him the enjoyment of all his rights, till he is acknowledged and admitted by the sovereign, to whom he delivers his credentials; yet, on his entering the country to which he is sent, and making himself known, he is under the protection of the law of nations; until he has had his audience of the prince, he is, on his own word, to be considered as a minister; and besides, exclusive of the notice of his mission usually given by letter, the minister has, in case of doubt, his passports to produce, which will sufficiently certify his character. These passports sometimes become necessary to him, in the countries through which he passes on his way to the place of his destination; and, in case of need, he shews them, in order to obtain the privileges to which he is entitled. It is true, indeed, that the prince alone to whom the minister is sent, is under any obligation, or particular engagement to ensure him the enjoyment of all the rights annexed to his character; yet the others, through whose dominions he passes, are not to deny him those regards to which the minister of a sovereign is entitled, and which nations reciprocally owe to each other. In particular, they are bound to afford him perfect security. To insult him would be injuring his master, and the whole nation to which he belongs; to arrest or offer him violence, would be infringing the right of embassy which belongs to all sovereigns.

These observations however apply only to nations at peace with each other. On the breaking out of a war, we cease to be under any obligation of leaving the enemy in the free enjoyment of his rights; on the contrary, we are justifiable in depriving him of them, for the purpose of weakening and reducing him to accept of equitable conditions. His people may also be attacked and seized wherever we have a right to commit acts of hostility. Not only, therefore, may we justly refuse a passage to the ministers whom our enemy sends to other sovereigns, we may even arrest them if they attempt to pass privately, and without permission, through places belonging to our jurisdiction.

The

The inviolability of a public minister, or the protection to which he has a more sacred and particular claim than any other person, whether native or foreigner, is not the only privilege he enjoys; the universal practice of nations allows him an entire independence on the jurisdiction and authority of the state in which he resides. But this independency is not to be converted into licentiousness, it does not excuse him from conforming with the laws of the country in all his external actions; so far as they are unconnected with the object of his mission and character, he is independent, but he has not a right to do whatever he pleases. Thus for instance, if there exists a general prohibition against passing in a carriage near a powder magazine, or over a bridge, against walking round and examining the fortifications of a town, &c. the ambassador is bound to respect such prohibitions. Should he forget his duty, should he grow insolent, and be guilty of irregularities and crimes, there are, according to the nature and importance of his offences, various modes of repressing him. As to what concerns the prince to whom he is sent, the ambassador should remember that his ministry is a ministry of peace, and that it is on that footing he is received. This reason forbids his engaging in any evil machinations: let him serve his master without clandestinely or treacherously injuring the prince who receives him.

Should an ambassador forget the duties of his station, should he render himself disagreeable and dangerous, should he form cabals and schemes prejudicial to the peace of the citizens, or to the state or prince to whom he is sent, there are various modes of punishing him, proportionate to the nature and degree of his offence. If he maltreats the subjects of the state, if he commits any acts of injustice or violence against them, the injured subjects are not to seek redress from the ordinary magistrates, since the ambassador is wholly independent of their jurisdiction; and for the same reason those magistrates cannot proceed directly against him, but they must apply to their sovereign, who demands justice from the ambassador's master, and in case of a refusal, may order the insolent minister to quit his dominions. Should a foreign minister offend the prince himself, should he fail in the respect he owes him, or by his intrigues embroil the state and the court, the offended prince, from a wish to keep measures with the offender's sovereign, sometimes contents himself with simply requiring his recal, or if the transgression be of a more serious nature, forbids his appearance at court in the interval while his master's answer is expected; and in cases of a heinous complexion, he even expels him from his territories. Every sovereign has an unquestionable right to proceed in this manner, for being master in his own dominions,

no foreigner can stay in his court or territories, without permission. And though sovereigns are generally obliged to listen to the overtures of foreign powers, and to admit their ministers, this obligation entirely ceases with regard to a minister, who, being himself deficient in the duties attached to his station, becomes dangerous, or justly suspected. Yet, in extreme cases, the power of the sovereign is not held to be limited to the mere expulsion of a criminal ambassador; in open acts of hostility, either by joining an enemy, or a rebellious party of subjects, the ambassador foregoes his sacred pacific character to assume that of an enemy, and must be treated accordingly. In cases of revolutionary conspiracy, it has been thought that a state might punish an ambassador; but this is doubted, and perhaps, on the whole, it were better to refer every offence of such persons to their own states, since the punishment of a guilty individual is of small moment, compared with the dangers which arise from any laxity or uncertainty in the observance of a sacred principle of public law. But if an ambassador attempts to poison or assassinate the monarch at whose court he is received, it seems that he may be punished as a treacherous enemy, guilty of poisoning or assassination. Sometimes princes send to each other secret ministers, whose character is not public. If a minister of this kind be insulted by a person unacquainted with his character, such insult is no violation of the law of nations; but the prince who receives this ambassador, and knows him to be a public minister, is bound by the same ties of duty towards him as towards one publicly acknowledged.

It is not lawful to maltreat an ambassador by way of retaliation, for the prince who uses violence against a public minister, is guilty of a crime; and we are not to take vengeance for his misconduct, by copying his example.

Some subordinate rights of ambassadors, which are not indispensably connected with their public functions, are yet generally allowed, and the withholding of some of them where they have once been admitted would be an act of harshness, at which the power sending such minister might reasonably take umbrage, though, with respect to others, prudence and dignity would equally recommend forbearance. One of the greatest of these rights, is the free exercise of their own religion, by the ambassador and his retinue; a concession generally made, but which, if claimed as a right, would be subject to many exceptions and limitations. The exemption of his baggage from impost, and from its necessary concomitants, detention and search at the custom house, is a compliment dependant on usage, one which it would be mean and unprincely to alter, but of the alteration of which no potentate could reasonably complain.

In

In civil cases, it is held that an ambassador is not subject to the jurisdiction of the country where he resides; but if he chuses to renounce a part of his independency, and subject himself in civil affairs to the jurisdiction of the country, he is undoubtedly at liberty to do so, provided it be done by his own master's consent. Without such consent, the ambassador has no right to renounce privileges, in which the dignity and service of his sovereign are concerned, which are founded on the master's rights, and instituted for his advantage, not for that of the minister. It is true, indeed, that the ambassador, without waiting for his sovereign's permission, acknowledges the jurisdiction of the country when he commences a suit as plaintiff in a court of justice; but the consequence, in that case, is inevitable. Besides, in a civil cause, on a point of private interest, no inconvenience attends it, since the ambassador has it at all times in his power to avoid commencing a suit; but he ought never to institute a prosecution, on a criminal charge, his vindication in such matters belonging exclusively to the sovereign, and the public.

A foreign minister is independent of the jurisdiction of the country: but his personal independence in civil cases would be of little avail, unless it extended to every thing which enables him to live with dignity, and quietly to attend the discharge of his functions. Every thing, therefore, which directly belongs to his person in the character of a public minister, every thing which is intended for his use, or which serves for his own maintenance, and that of his household, partakes of his independency, and is absolutely exempt from all jurisdiction in the country. Those things, together with the person to whom they belong, are considered as being out of the country; but this exemption cannot extend to such property as evidently belongs to the ambassador, under any other relation than that of a minister. What has no affinity with his functions and character, cannot partake of the privileges which are solely derived from his functions and characters. Should a minister, therefore, (as it has often been the case) embark in any branch of commerce, all the effects, goods, money, and debts, active and passive, which are connected with his mercantile concerns, and likewise all contests and law suits to which they may give rise, fall under the jurisdiction of the country; and although, in consequence of the minister's independency, no legal process can, in those law suits, be directly issued against his person, he is nevertheless, by the seizure of the effects belonging to his commerce, indirectly compelled to plead in his own defence.

The independency of the ambassador would be very imperfect,

perfect, and his security very precarious, if the house in which he lives were not to enjoy a perfect immunity, and to be inaccessible to the ordinary officers of justice. He might be molested and insulted under a thousand pretexts; and his secrets might be discovered by searching his papers. In all civilised nations, therefore, an ambassador's house is, equally with his person, considered as being out of the country; to insult it, is a crime both against the state and against all other nations; but this immunity cannot be extended beyond its real and just import; the dwelling of an ambassador cannot be converted into an asylum for criminals or debtors, nor is a sovereign obliged to tolerate an abuse so pernicious to his state, and so detrimental to society. It is not politic however to investigate too strictly the motives for which occasional refuge is afforded by ambassadors, as a government suffers little by these occasional connivances, but public faith would be extremely insecure were the houses of foreign ministers frequently invaded by the inferior officers of the law on any pretence, however well founded. The observations on an ambassador's house apply to his carriages and equipages. They are independent of all subordinate authority, of guards, custom-house officers, magistrates and their agents, and must not be stopped or searched without a superior order. But in this instance, as in that of the ambassador's house, the abuse is not confounded with the right. It would be absurd that a foreign minister should have the power of conveying off in his coach a criminal of consequence, a man, in the seizure of whose person the state was highly interested; and that he should do this under the very eyes of the sovereign, who would thus see himself defied in his own kingdom and court. The ambassador's wife, family, and retinue, partake of his inviolability; his independency extends to every individual of his household: so intimate a connexion exists between him and all those persons, that they share the same fate with him; they immediately depend on him alone, and are exempt from the jurisdiction of the country, into which they would not have come without such reservation in their favour. The ambassador is bound to protect them; and no insult can be offered to them, which is not at the same time an insult to himself. His private secretary is one of his domestics: but the secretary of the embassy holds his commission from the sovereign himself; which makes him a kind of public minister, enjoying in his own right the protection of the law of nations, and the immunities annexed to his office, independently of the ambassador, to whose orders he is indeed but imperfectly subjected, sometimes not at all, and always in such degree only, as their common master has been pleased to ordain. Couriers sent or received by an ambassador, his pa-

pers, letters, and dispatches, all essentially belong to the embassy, and are consequently to be held sacred; since, if they were not respected, the legitimate objects of the embassy could not be obtained, nor would the ambassador be able to discharge his functions with the necessary degree of security.

The persons in a foreign minister's retinue being independent of the jurisdiction of the country, cannot be taken into custody or punished without his consent. It would nevertheless be highly improper that they should enjoy an absolute independence, and be at liberty to indulge in every kind of licentious disorder without controul or apprehension. The ambassador must necessarily be supposed to possess whatever degree of authority is requisite for keeping them in order: and some writers make that authority include even a power over life and death. In general, however, it is to be presumed that the ambassador is possessed only of a coercive power, sufficient to restrain his dependants by other punishments which are not of a capital or infamous nature. He may punish the faults committed against himself and against his master's service, or send the delinquents to their sovereign, in order to their being punished; but should any of his people commit crimes against society which deserve a severe punishment, the ambassador ought to make a distinction between such of his domestics as belong to his own nation, and others who are subjects of the country where he resides. The shortest and most natural way with the latter is to dismiss them from his service, and deliver them up to justice. As to those of his own nation, if they have offended the sovereign of the country, or committed any of those atrocious crimes in the punishment of which all nations are interested, and whose perpetrators are, for that reason, usually surrendered by one state when demanded by another, he should give them up to the nation which calls for their punishment. If the transgression be of a different kind, he is to send them to his sovereign. Finally, if the case be of a doubtful nature, it is the ambassador's duty to keep the offenders in irons, till he receives orders from his court; but if he passes a capital sentence on the criminal, he cannot have it executed in his own house; an execution of that nature being an act of territorial superiority, which belongs only to the sovereign of the country; and although the ambassador, together with his house and household, be reputed out of the country, that is nothing more than a figurative mode of speech, intended to express his independency, and all the rights necessary to the lawful success of the embassy: nor can that fiction involve privileges which are reserved for the sovereign alone, which are of too delicate and important a nature to be communicated to a foreigner, and, moreover, not necessary to the ambassador for the due discharge of his functions.

OFFICERS OF STATE.

Among the several characters established by custom, it rests with the sovereign to determine with what particular one he chuses to invest his minister; and he makes known the minister's character in the *credentials*, which he gives him for the sovereign to whom he sends him. Credentials are the instruments which authorise and establish the minister, in his character with the prince to whom they are addressed. If that prince receive the minister, he can receive him only in the quality attributed to him in his credentials. They are, as it were, his general letter of attorney, his *mandate patent*, *mandatum manifestum*.

The *instructions* given to the minister contain his master's *secret mandate*, the orders to which the minister must carefully conform, and which limit his powers.

When the commission of an ambassador is at an end; when he has concluded the business for which he came, is recalled or dismissed; or obliged to depart on any account whatever, his functions cease, but his privileges and rights do not immediately expire; he retains them till his return to his sovereign, to whom he is to make a report of his embassy. Accordingly, when an ambassador departs on account of a war arising between his master and the sovereign at whose court he was employed, he is allowed a sufficient time to quit the country in perfect security: and moreover, if he was returning home by sea, and happened to be taken on his passage, he would be released without a moment's hesitation, as not being subject to lawful capture.

For the same reasons the ambassador's privileges still exist at those times when the activity of his ministry happens to be suspended, and he stands in need of fresh powers. Such a case occurs in consequence of the death of the prince whom the minister represents, or of the sovereign at whose court he resides, on either of which occasions he must be furnished with new credentials. The necessity, however, is less cogent in the latter than in the former case, especially if the successor of the deceased prince be the natural and necessary successor; because, while the authority whence the minister's power emanated, still subsists, it is fairly presumable that he retains his former character at the court of the new sovereign. But if his own master is no more, the minister's powers are at an end; and he must necessarily receive fresh credentials from the new prince, before he can be authorised to speak and act in his name. In the interim, however, he still continues to be the minister of his nation, and, as such, is entitled to enjoy all the rights and honours annexed to that character.

These are the privileges and immunities, as enumerated by a celebrated writer on the law of nations, which every ambassador

enjoys; the peculiar provisions made in England, are entirely calculated to give effect to those rights, so far as they relate to foreign ministers residing among us, and to intitle those who are deputed by the government of Great Britain to other states to all the respect and consideration which belong to their functions. In all Europe the opinions of jurists have been divided whether the immunity of the ambassador extended to all cases, or was restricted to such alone as were *mala prohibita*, and not *mala per se*; but in many instances the partition between these is too thin, and the distinctions too much dependant on local customs and manners for them to form the general basis of decisions, and therefore, as already has been observed, governments act more wisely in allowing even gross criminals to escape in all cases except treason, and frequently even in that, than in inciting disputes which might put the entire well-being of the state in hazard. The last instance which occurred in England of the punishment of an ambassador, was that of Don Pantaleon Sa, during the protectorate of Cromwell; and although eminent lawyers have justified the proceeding, the law, as well as the policy of it, may reasonably be doubted. With respect to personal privilege, the law of England was so little settled, that in 1708, the Russian ambassador was actually arrested, and taken out of his carriage in the public streets. Peter the Great, exasperated at this indignity, demanded that the sheriff of Middlesex, and all others concerned in it should be punished with immediate death; the queen remonstrated that such an atonement was not in her power, as the constitution of England would not permit the infliction of a punishment, even on the meanest subject, unless warranted by the law of the land. The offenders, seventeen in number, were however committed to prison, prosecuted by the attorney general, and found guilty; and the parliament passed a law reciting the arrest which had been made, "in contempt of the protection granted by her majesty, contrary to the law of nations, and in prejudice of the rights and privileges, which ambassadors and other public ministers have at all times been thereby possessed of, and ought to be kept sacred and inviolable;" and enacting that for the future all process whereby the person of any ambassador, or of his domestic, or domestic servant, may be arrested, or his goods distrained or seized, shall be utterly null and void; and the persons prosecuting, soliciting, or executing such process, shall be deemed violators of the law of nations, and disturbers of the public repose; and shall suffer such penalties and corporal punishment, as the lord chancellor and the two chief justices, or any two of them, shall think fit. But it is expressly provided, that no trader within the description of the bankrupt laws, who shall be in the service

service of any ambassador, shall be privileged or protected by this act; nor shall any one be punished for arresting an ambassador's servant, unless his name be registered with the secretary of state, and by him transmitted to the sheriffs of London and Middlesex. And in consequence of this statute, thus declaring and enforcing the law of nations, these privileges are now held to be part of the law of the land, and are constantly allowed in the courts. On receiving a copy of this statute elegantly engrossed and illuminated, with a soothing letter from the queen, the monarch of Muscovy was appeased. Perhaps a little ambiguity in the wording of the act helped to mitigate his choler; for he might conceive that the power of punishment vested in the judges extends to sentence of death; but that is not the fact, as no law exists by which the offence is declared capital. It is however to be observed, and not without regret, that, in compliment perhaps to the injured feelings of this outraged potentate, and of the whole diplomatic body, who made it a common cause, the offender is deprived of his trial by jury.

Ambassadors from the British to foreign courts are expressly appointed by the king; their emoluments are paid out of the civil list, and for the expences of procuring intelligence which the nature of the situation requires, they are furnished with sums from a fund devoted to secret service. They correspond with the secretary of state, and for the sake of secrecy, frequently use arbitrary signs or cyphers. Their salaries are undetermined, but each receives at the time of his appointment, a service of plate, or its value in money, which is settled at 2000*l*.

Besides ambassadors, it is necessary, in treating on the subject of foreign communication, to notice some other classes of agents, termed, envoys, residents, ministers, and consuls.

Envoys are not invested with the representative character, properly so called, or in the first degree. They are ministers of the second rank, on whom their master was willing to confer a degree of dignity and respectability, which, without being on a level with the character of an ambassador, immediately follows it, and yields the pre-eminence to it alone. There are also *envoys ordinary*, and *extraordinary*; and it appears to be the intention of princes that the latter should be held in greater consideration. This likewise depends on custom.

The word *Resident* formerly related only to the continuance of the minister's stay; and it is frequent in history for ambassadors in ordinary to be designated by the simple title of residents; but since the practice of employing different orders of ministers has been generally established, the name of resident has been confined to ministers of a third order, to whose character general custom has annexed a lesser degree of respectability. The

resident does not represent the prince's person in his dignity, but only in his affairs. His representation is in reality of the same nature as that of envoy: wherefore he is often termed as well as the envoy, a minister of the second order, thus distinguishing only two classes of public ministers, the former consisting of ambassadors who are invested with the representative character in pre-eminence, the latter comprising all other ministers not equally exalted. This is the most necessary distinction and indeed the only essential one.

A custom of still more recent origin has introduced a new kind of ministers without any particular determination of character. These are called simply *ministers*, to indicate that they are invested with the general quality of a sovereign's mandatories, without any particular assignment of rank and character. It was likewise the punctilio of ceremony which gave rise to this innovation. Use had established particular modes of treatment for the ambassador, the envoy, and the resident. Disputes between ministers of the several princes often arose on this head, and especially about rank. In order to avoid contests on certain occasions, the expedient was adopted of sending ministers, not invested with any one of the three known characters, who are not subject to any settled ceremonial, and can pretend to no particular treatment. The minister represents his master in a vague and indeterminate manner, which cannot be equal to the first degree; consequently he makes no demur in yielding pre-eminence to the ambassador. He is entitled to the general regard due to a confidential person intrusted by a sovereign with the management of his affairs; and he possesses all the rights essential to the character of a public minister. This indeterminate quality is such, that the sovereign may confer it on one of his servants, whom he would not chuse to invest with the character of ambassador: and on the other hand, it may be accepted by a man of rank, who would be unwilling to undertake the office of resident, and to acquiesce in the treatment at present allotted to men in that station. There are also *ministers plenipotentiary*, who are of much greater distinction than simple ministers, but are also without any particular attribution of rank and character, although by custom they are now placed immediately after the ambassador, or on a level with the envoy extraordinary.

Among the modern institutions for the advantage of commerce, one of the most useful is that of *consuls*, or persons residing in the large trading cities, and especially the sea ports, of foreign countries, with a privilege to watch over the rights and privileges of their nation, and to decide disputes between her merchants there. When a nation trades largely with a country,

country, it is requisite to have there a person charged with such a commission: and as the state which allows of this commerce must naturally favour it, for the same reason also, it must admit the consul. But there being no absolute and perfect obligation to this, the nation that wishes to have a consul, must procure this right by the commercial treaty itself. The consul being charged with the affairs of his sovereign, and receiving his orders, continues his subject, and accountable to him for his actions; he is no public minister, and cannot pretend to the privileges annexed to such character; yet, bearing his sovereign's commission, and being in this quality received by the prince in whose dominions he resides, he is, in a certain degree, entitled to the protection of the law of nations. This sovereign, by the very act of receiving him, tacitly engages to allow him all the liberty and safety necessary to the proper discharge of his functions, without which the admission of the consul would be nugatory and delusive. The functions of a consul require, in the first place, that he be not a subject of the state where he resides; as, in this case, he would be obliged in all things to conform to its orders, and not at liberty to acquit himself of the duties of his office: they seem even to require that the consul should be independent of the ordinary criminal justice of the place where he resides, so as not to be molested or imprisoned, unless he himself violate the law of nations by some enormous crime. And though the importance of the consular functions be not so great as to procure to the consul's person the inviolability and absolute independence enjoyed by public ministers, yet, being under the particular protection of the sovereign who employs him, and intrusted with the care of his concerns, if he commits any crime, the respect due to his master requires that he should be sent home to be punished. Such are the modes pursued by states that are inclined to preserve a good understanding with each other; but the surest way is, expressly to settle all these matters, as far as practicable, by a commercial treaty.

REVENUE.

In this part will be considered the progress made by the nation in the science of finance, from the rudest times to the present; the national debt, with the stocks in which it is invested; the establishments formed for the purpose of transacting the public business connected with the revenue, and the means of raising supplies both ordinary and extraordinary; the

coinage of the nation, and such other subjects connected with the public welfare as arise out of pecuniary transactions.

Every state is subject to the necessity of providing a public fund to pay the current expences of administration, and the manner of providing this indispensable resource is among the chief characteristics by which a government is denominated free or slavish, strong or feeble, wise or impolitic. In Great Britain the public purse has long been tenaciously retained by the House of Commons; but neither the possession nor the administration of the national treasure was so inalienably consigned to them in early times as in these days. The revenue and the laws by which its expenditure is regulated, have grown up with the commercial and political progress of the country; and its history is among those which are best intitled to the notice of the politician. Sir John Sinclair, from whose excellent work on the revenue the following statement is principally derived, observes that "in attempting to give an historical account of the finances of this country, the subject naturally divides itself into two branches: the first relating to our public revenue prior to the revolution in 1688: the second, to our system of finance since that period. During the first era, the expences of the state were principally defrayed by the ordinary revenue of the crown. It seldom happened that any extraordinary tax was imposed on the people; and even then, it was only a temporary grant to the monarch on the throne. The period since the revolution, is distinguished by different principles. The state, assuming the appearance of a great corporation, extends its views beyond immediate events and momentary exigencies; forms systems of remote, as well as of immediate profit; borrows money, to cultivate, defend, or acquire distant possessions, in hopes that it will be amply repaid by the advantages they may be brought to yield; at one time it protects a nation whose trade it considers as beneficial; at another, it engages in war, lest the power of a rival should become too great: in short, it proposes to itself a plan of perpetual accumulation and aggrandizement, which, according as it is well or ill conducted, must either terminate in the possession of an extensive and powerful empire, or in total ruin."

BRITONS. In the earliest periods of British history, the government, commerce, and revenue of the country can be but little known. The nation was divided into petty tribes, each of which had its prince or leader, whose influence was proportioned to his ability and success. His domain, or individual estate, augmented by accidental accessions gained in war or by confiscation, formed the principal support of his government; plunder

plunder in battle and the prerogative of coining were additional means of wealth; and the remaining supplies arose from the presents given by foreign sovereigns, and the voluntary contributions of his own subjects.

ROMANS. During the time of the Romans, Britain was, like the other conquests of that empire, subject to the most grievous exactions: the taxes were partly levied in kind, and partly in money: those who paid in kind, were obliged to furnish about a tenth part of the produce of their lands, and to carry the quantity they were rated at, to any distance however great, according to the supposed necessities of the state, or the caprice of those who were in power; the duty on cattle, in which Britain abounded, was peculiarly oppressive: heavy customs were imposed on goods both imported and exported; the proprietors of mines were obliged to pay a certain share of their profits, for the benefit of the state: a duty was laid upon commodities sold by auction, or in the public market, above a certain value: capitation taxes were rigorously executed; to which might be added, a variety of other imposts, on legacies, slaves, houses, pillars, hearths, air, artists, animals, and other articles too tedious to mention; and there was even a tax on the dead body before interment could be allowed. At first the income of this province did not pay the expences of the establishment, but in process of time it furnished large remittances to the imperial treasury, the revenue amounting, according to a calculation, which is however uncertain, to 2,000,000*l.* sterling.

SAXONS AND DANES. The dominion of the Saxons presents few materials for an account of the progress of taxation. In the heptarchy, the sovereigns, in course, possessed the greatest portion of the land in their respective kingdoms, and all these when united in one sovereign must have yielded a large revenue. The mulcts arising from the trial of causes, and the composition for certain offences were also a great source of emolument: the *trinoda necessitas*, a duty incumbent on every man, to repel the enemy, construct fortresses, and repair bridges, when commuted for money, produced revenues called *Heregeld*, *Burg-bote*, and *Brig-bote*; but the greatest and most permanent tax was that levied under the title of *Danegeld*, imposed at first to bribe those barbarians from invading the country, and continued under pretence of defending it against them. It commenced in 991, and consisted in the payment of one shilling or more for each hide of land, of which there were in England 243,600. This tax as imposed by Canute in 1018, amounted to 83,000 Saxon pounds, equivalent to two millions and a half of modern money; but it exceeded the powers of the people.

NORMAN LINE. William the Conqueror secured his acquisition

quisition of the English throne, and enriched himself, principally by the complete establishment of the feudal system; the survey made of the kingdom in general, and in particular of the value and extent of the royal domains; and the institution of a court of exchequer, after the model of a similar court in Normandy. The feudal system in itself was not new; the tenure of lands on condition of performing military services, existed in the Roman and other empires, and, under the Saxon government, proprietors of land were obliged to assist the sovereign in war; but under the Norman system, the lands were not hereditary, and the devices for continuing the possession in families, gave rise to wardships, reliefs, and the other profitable incidents in the feudal system. The whole kingdom was then divided into 60,215 knights' fees; the holder of each of which was not only bound to furnish a knight, or armed horseman, for the public defence, but he was likewise liable to a variety of impositions, at first light and easy, and apparently for the benefit of the vassal, but afterwards converted, by the subtle dexterity of the feudal lawyers, into a system fraught with every species of oppression. A survey of the kingdom was rendered necessary, by the dispersed situation of the lands belonging to the crown; one had been made by order of Alfred, which extended to little beside his own possessions; but the book called *Doomsday*, compiled by command of the Conqueror, was, except as to a few of the northern counties, a general record of the highest value and authority. The court of exchequer was erected for the better management of the royal income; it was formed on the Roman model, and designed to oppress the people under colour of law.

The revenue of William may be considered under four heads. The income of the royal domains; voluntary gifts; legal taxes; and tyrannical exactions. His domains, after all his gifts to his followers, were ample and productive; the voluntary donations of his subjects, especially in the early part of his reign, were very large, they resulted from his exertions to conciliate their affections; but his conduct soon altered to a most atrocious tyranny; the taxes were at first contingent, arising from his profits as Lord Paramount of all the land, but afterward, on pretence of defending the realm, he revived the *Danegeld*, which, in his reign, varied from one shilling, to six shillings, per hide; the tyrannical exactions are described in their very name; they consisted in making arbitrary demands of money from individuals, and, at length, in the plunder of monasteries and churches, where wealth was supposed to be deposited; and this plunder was not confined to the money, jewels, and plate of individuals, but extended even to the shrines and chalices,

chalices.' By such means this monarch is said to have raised an annual revenue of 400,000*l.* equal, according to some, to ten millions in our days, though others estimate it at less than six; but in either case it was truly enormous, since it was not incumbered by any charge. This amount is disputed by some authors, but it is not deemed remote from truth, by those who consider the magnificence in which the Conqueror lived, and the vast treasure in money and effects which he left at his death.

The reign of William Rufus contains nothing new in the history of revenue, except the compulsion he practised on his subjects, in order to extort money under the name of *benevolences*, and the various acts of meanness and oppression which procured him the expressive name of the Red Dragon.

Henry I. possessing the crown by a disputable title, sought to ingratiate himself with the nation, by the grant of a charter, which, when his authority became secure, he did not scruple to violate; but its provisions were favourable to liberty and property, and formed the basis of Magna Charta. In finance, his reign was remarkable for an imposition on churches, for which the incumbent was made responsible; and still more for the commencement of the custom of receiving the rents of royal demesnes in money, instead of taking them in kind, a change which contributed much to the impoverishment of the crown.

Stephen, a manifest usurper, passed his reign in perpetual war, and civil bloodshed. He had promised to remit the Danegeld, which he was, however, by necessity compelled to enforce, and it was the only regular tax he imposed; for during the greatest part of his reign, the only means he had of supporting his troops, and maintaining his dignity, was by plunder and extortion. He is also accused of alienating the demesnes of the crown, debasing the coin, and selling to the highest bidder, honours, offices, dignities, and benefices in the church, the last pitiful resource of a profuse and indigent monarch. The nation is represented to have been in a state the most deplorable. Some forsook their native country, to avoid the miseries under which it groaned. A multitude of foreign mercenaries, brought over by Stephen to assist him in his usurpation, and to support his authority, spread horror and devastation wherever they went; many who had lived in opulence, were glad to shelter themselves in the meanest cottages, and to feed upon dogs and carrion; the fields lay fallow and neglected; commerce and industry were abandoned; towns of considerable note were deserted by their inhabitants; nor was any place, however sacred or remote, exempted from the general calamity.

HOUSE OF PLANTAGENET. No imposition laid by the monarch

monarchs of the Norman race appeared to originate from, or conduce to the prosperity of the people; avarice or necessity dictated every exaction, and even the pretext of defending the country, which was assigned for the levy of the Danegeld, was considered as absolutely fictitious. No wonder then that the British people, so long oppressed, should hail the line of Plantagenet as the restoration of their Saxon kings; the omen would be well received, though not entirely free from fiction, since Henry II. although connected with the Saxon line, was not by that descent, heir to the throne. His measures of finance shewed the first glimmering of a better day: he resumed the crown lands, improvidently and illegally granted by his predecessor, and this too with the consent of parliament, and he began the custom of receiving a duty called Scutage, from each knight as a composition for the service which the individual must otherwise have performed. This led to the establishment of a regular army, by enabling the monarch to pay perpetual soldiers, instead of depending on the casual and temporary service of knights, who considering their attendance a hardship, longed for its termination. This monarch too, aided by the general zeal in favour of the crusade against the infidels, collected from his subjects an imposition with which England had been hitherto unacquainted; a tax on personal property. It was levied in this manner: a chest was erected in the different churches, into which every man, after having taken an oath, and justly summed up the value of his effects, and the debts which he considered secure, was obliged to put in two-pence in the pound for the first year, and one penny in the pound for the four following years, under the penalty of excommunication; this assessment would not probably have been submitted to, had it been appropriated to a less popular purpose. The same zeal also enabled him to raise a tax, called Saladin tythe, being a tenth part of the personal property of all those who staid at home, and took no share in the expedition against that gallant Mussulman. To this contribution, the English are said to have paid 70,000, the Jews 60,000 pounds, the aggregate being equal to two millions of modern money. Henry was also the first who raised the feudal aid, *pour fille marier*, but this was drawn only from tenants *in capite*; he is accused of pillaging the church, executing with rigour the forest laws, and reviving the obsolete Saxon impositions Burg-bote, Brig-bote, Heregeld, and Horngeld, but these charges do not appear to be well founded; he offended the church, which, as Romish churchmen were the only historians, was sufficient to tarnish his fame; but in his reign, either by connivance or express command, the odious Danegeld was finally extinguished. Henry at his death possessed a treasure

which authors estimate differently, but it was most probably about 100,000 marks.

The reign of Cœur de Lion exhibited a perpetual picture of financial rapacity proceeding from the distress of the monarch; but the causes of that distress were so closely allied with feelings of national glory, that the annals of Richard I. have ever been quoted as conspicuously honourable to England. The romantic ardour with which he embraced the enterprize of the crusade, and the renown he acquired during its progress, made his subjects forget the dangerous and oppressive means he took to equip himself, and submit without a murmur to the further exactions which were rendered necessary by his captivity and his subsequent wars. In the beginning of this reign, the crown lands, and offices of the greatest trust and power, were disposed of, almost at any price. The feudal superiority of Scotland was sold for 10,000 marks. Arbitrary fines were levied from the officers of the crown, under pretence of delinquency; the rich, who had escaped other modes of extortion, were compelled to supply the king with money by way of loan, without any hope of being repaid; nay, under colour that the great seal was lost, former grants were held to be invalid; a new seal was made, and every person was obliged to purchase a renewal and confirmation of his patent. It is said, that, by these and other means of exaction equally odious, so much money was raised, and carried out of the kingdom, that a genuine coin of this monarch's stamp is hardly to be met with in the most valuable and curious collections. The exorbitant sum demanded for his ransom, 150,000 marks, being beyond the power of the military tenants of the crown to supply, a general tax was imposed, and voluntary contributions were carried to their utmost extent. On his return, the monarch was obliged through necessity to resume many of the improvident grants he had formerly made; to tax the clergy, to renew, under the name of *Hydage*, the tax called *Danegeld*, and through scarcity of coin, to receive the tax on wool in kind. The distress of the exchequer furnished the hint of raising money by means of licences: these were first imposed on persons entering the lists at jousts and tournaments: the rates were, for an earl, twenty marks of silver; a baron, ten marks; a knight having lands, four; and a knight having no land, two marks.

John was in all respects a disgrace to the English throne. An usurper and a tyrant, cruel, unjust, prodigal, and feeble, he knew no restraint on his passions, but what arose from fear, nor any limitation to his baseness when driven to the necessity of submission. *Magna Charta* is a blessing resulting from his reign, but without procuring him either gratitude or esteem; while

the surrender of his crown to the pope's legate, although no evil results from it in modern days, is ever remembered with detestation and disgust. In finance his rapacity was unbounded, and his only invention, cruelty and extortion. In a reign of seventeen years only three passed without some grievous imposition on the subject. The means were the direct plunder of those who were known to be rich, and considered to be unresisting: the clergy were drained of immense sums, and the Jews were compelled, by every kind of torture, to yield up their property; yet the king lost on the continent the ancient patrimony of his family, and passed his time at home in misery, turbulence, and disgrace; leaving a name consecrated to contempt by the addition of *Sans-terre*, or Lackland. The great charter was however a barrier against the oppressions of future kings, in preventing the impositions of scutages or aids, without the consent of parliament, except for certain purposes, and restraining the extortions committed under the name of fines and amercements. In this reign it appears too that the customs were of some, though very slight consideration, since they are mentioned in Magna Charta, though they were farmed at so small a sum as 1000 marks.

The long reign of Henry III., a term of continual profusion and distress, exhibits only the usual course of scutages, aids, talliages, and similar devices for supplying the wants of the monarch. From the Jews this king extorted 400,000 marks; for 300,000 French livres, and lands worth 20,000 livres per annum, he sold his title to Normandy and Anjou; he was obliged to sell the very furniture of the palace; pawn the jewels of the crown, and even the shrine of Edward the Confessor. He is represented as wandering about the country, soliciting the charitable contributions of his subjects, and his attendants were reduced to such straits and difficulties, that they were compelled to confederate with gangs of robbers, in order, by their share of the booty, to secure a maintenance. In this reign the device was invented of compelling persons possessing a certain portion of land, to receive kighthood or pay a fine; and in this reign the customs were so far advanced as to produce 6,000 *l.* per annum, though the raising this sum occasioned grievous complaints.

Far different from that of his predecessor was the government of Edward I., the English Justinian; for although necessity drove him to occasional acts of oppression, still his subjects saw with satisfaction, that the treasure he obtained was expended for the advantage and glory of the nation; they saw the clergy, by his vigour, compelled to contribute toward the general expences, not by the effect of momentary violence, but of a deliberate and regular system, and above all, they had the happiness to obtain

obtain the final confirmation of *Magna Charta*, with additional articles, and the invaluable statute *de tallagio non concedendo*, which remedied the defect in the great charter, and prevented the king from raising any aid or talliage whatever, without the consent of parliament. In this reign the customs were greatly improved and augmented, and began to assume a regular form, and produce a beneficial effect; they were divided into *the ancient customs*, consisting of duties laid on wool, skins, and leather; and *the new customs*, comprising those afterward called tunnage and poundage, and being certain duties on goods imported and exported by alien merchants. In this reign, after undergoing many cruel oppressions, the Jews were banished the realm, but the act, however harsh, was far from unpopular, so odious, for some cause, were those people become. At this period commerce having made considerable advance, the usual resource of the crown, military services, became less productive than formerly, and the taxation of cities, towns, and boroughs, by their representatives, a matter of the highest importance.

Edward II. was much unlike his illustrious parent, but his weakness was prevented from being the cause of oppression on his subjects, by the operation of the laws which had been passed, in his father's reign. The parliament might rather be accused of a too considerate regard of the national purse, at the expence of the dignity of the crown, and the public welfare; yet, in the hope of conquering Scotland, they consented to an imposition by which every village, town, and city in the kingdom was obliged to furnish a certain number of men armed and equipped for sixty days, and a fifteenth part of the moveables of the laity.

The reign of Edward III. was distinguished by a series of parliamentary grants, under all the denominations usual in those days, of twentieths, fifteenths, and tenths, besides some extraordinary taxes in kind, as the ninth sheaf, the ninth lamb, and sometimes, a subsidy in wool. In the 45th year of Edward, a tax was laid of 50,000*l.* on the whole kingdom, to be raised by the parishes in their respective proportions, being the first record of the grant of a specific sum. The customs were greatly enhanced, and those imposed by the first Edward on aliens alone, were extended to native merchants; this monarch also had recourse to the pernicious measure of a poll-tax, being an assessment of four-pence on every person, male and female, beyond the age of fourteen, except beggars, and the clergy granted twelve-pence for every beneficed, and four-pence for every other person except mendicant friars. This tax was not collected without great murmurs and difficulty, but increasing necessities demanded greater efforts; the statute *de tallagio non concedendo* was oc-

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casionally violated; the effects of the Lombards, who succeeded the Jews in the trade of usurers, and who inherited with it their unpopularity, were seized and confiscated. Edward is accused of being the first who erected monopolies; of extorting loans; and of possessing himself by force, of goods belonging to his subjects, undertaking to pay them an inferior price at a distant day; yet with all the sums thus acquired and extorted, and with all the wealth which resulted from his conquests, and the ransom of captive kings, Edward was in the latter, as in the early years of his reign in the greatest pecuniary distress, and finally stripped of all his foreign conquests, in consequence of an attempt to raise from his continental dominions a very slight tax.

The first conspicuous act in the reign of Richard II. was the imposition, during his minority, of a tax called a subsidy, designed to spare the poor, and imposed principally on the rich: it was levied partly by a poll-tax, and partly by one on income: the dukes of Lancaster and Brittany paid ten marks each; every earl was charged four pounds; every baron forty shillings; but the great body of the people, merchants, artificers, and husbandmen, were assessed a greater or lesser sum, according to the value of their estates. This tax occasioning some discontent among those whom it most affected, the ministers of the young king next tried the opposite extreme, and the necessity of the state requiring 160,000 *l.*, they levied a poll-tax of twelve-pence on every person above fifteen years of age, mere beggars excepted. Some distinction was to be made in favour of the indigent, but it could not be very considerable, as no person was to be charged above sixty groats, for himself and family. This most unjust and excessive imposition being farmed by contractors, who behaved with great insolence, the people flew to arms, and the rebellion headed by Wat Tyler, was the consequence. In quelling this threatening insurrection, the young king shewed a spirit and judgment which, had they prevailed in other parts of his life, would have made his reign such as became the son of the Black Prince; but far different was his conduct, far different was his fate. He procured, from a garbled parliament, the subsidy on wool, leather, and wool-fells exported, *for life*—the first instance of such a grant, and which was considered as a baneful precedent. He extorted considerable sums from his wealthiest subjects, by way of loan, which it was dangerous for them to refuse, and ruinous to pay; and under pretence, that several counties had engaged in rebellious practices (notwithstanding a general pardon had been granted by act of parliament), he threatened them with the severest marks of his displeasure, if they did not compound for their offences:

and

and they were actually compelled to sign blank bonds, in those days called *ragmen*, which the king filled up in any manner, and with any sum he thought proper. After all, the money which he obtained, either from the bounty of his people, or by means of extortion, instead of being laid out for the glory and advantage of his kingdom, was either thrown away upon the minions of his court, or wasted in maintaining an enormous household, amounting, it is said, to 10,000 persons, of whom 300 were employed in the very kitchens of the palace.

With Richard II., ended the Saxon line, or House of Plantagenet, under which, it is observed, no inconsiderable progress was made in the knowledge of finance. The necessity of converting military services into pecuniary aids was discovered; taxes began to be laid on personal as well as real property; the customs came to be accounted a considerable and important branch of the revenue; and the clergy were compelled to furnish contributions for the public service; nor was the sanction of the pope any longer accounted necessary for that purpose. New modes of taxation also were attempted; and though some of them were ill contrived and unproductive, yet it proves the strong anxiety of those who were intrusted with the government of the country, to provide an effective revenue, adequate to that high and distinguished rank, which England was entitled to hold among the kingdoms of Europe.

HOUSE OF LANCASTER. Henry IV., a military usurper, however urged by his necessities or inclinations, was obliged, at the beginning of his reign, to recommend himself to popularity by appearances of moderation, and his demands for money were small; but his judgment leading him to promote the commercial interests of his people, the customs increased, and the parliament granted him as large a revenue out of them as had been enjoyed by his predecessor. In his reign a tax was laid on places, pensions, and grants from the crown, one year's amount of each being given to the king by the celebrated lack-learning parliament, or *parliamentum indoctum*. A subsidy too was imposed in this reign of such fearful amount, that great pains were taken to prevent it from being known; it is however discovered to have been a tax on real and personal property, amounting to twenty shillings on every knight's fee; twenty pence upon every twenty pounds a year in lands; and one shilling in the pound on money, and goods. Attempts were also recommended both by the above mentioned parliament, and the king's military counsellor on the property of the clergy; but the influence of the clergy did not allow of an experiment which the proposed sufferers avowed their intention of resisting.

In order to magnify that which requires no aid from fiction, the conquest of France by Henry V., historians have taken too easily on credit a report of his being furnished but with very scanty supplies. It seems however that, besides his ordinary revenue of 76,643*l.* per annum, he received large grants from parliament, and the clergy, and the intire revenues of one hundred and ten monasteries dependant on others in Normandy, which were given up by the ecclesiastics, to avert the seizure of their whole property, which was again proposed. To this great and beloved monarch, parliament for the first time granted the customs on wool, and leather, and the duties of tannage and poundage, for life.

During the minority of Henry VI., the income of the crown was neglected and squandered in a most unprincipled manner; yet as the factions which then contested for the rule of the nation were desirous of popularity, the burthens on the public were not large, and to the parsimonious supplies sent to the army, the loss of France has been ascribed. In this and subsequent periods of the reign, subsidies were granted; the duties of tannage and poundage were settled on the king for life, and made to fall doubly heavy on aliens, who were also subjected to a severe poll-tax; benevolences were also required, and now, for the first time, demanded, not as matter of courtesy, but of right. The king, it was said, could by law compel all his subjects, at their own charges, to attend his wars; but he was willing to spare such as would contribute the value of two days personal service, according to their rank and quality. The miseries of this unfortunate reign extended to pecuniary matters; Henry being obliged in his twenty-ninth year to submit to a sort of guardianship as to his property, while parliament became in some degree responsible for his debts, which amounted to the enormous sum of 372,000*l.*

HOUSE OF YORK. Ascending the throne after a long and sanguinary struggle, Edward IV., with the consent of his parliament, began his financial operations by resuming the grants of crown lands made during the preceding reign, and these possessions were much augmented by confiscations of property, from the adherents of the house of Lancaster. The grants of parliament were liberal, and in the usual mode of tenths and fifteenths, with additional imposts on each; specific sums for stated purposes, and a yearly subsidy on aliens and denizens; yet the necessities of the monarch drove him to the expedient of extorting benevolences, in procuring which he was so successful, as even to turn his natural graces to account. An expedition against France, projected with vast ostentation, terminated in a compromise by which Lewis XI., was to pay to
Edward

Edward 75,000 crowns, and an annuity of 50,000 crowns during their joint lives; this transaction was so disgusting to the nation, that the king, no longer venturing to call on parliament for supplies, had recourse to several means of extortion, which historians have not ventured to commemorate, and among others, to a severe investigation of titles to lands, thus compelling many to pay large fines for confirmation of their grants, and obtaining great sums from the clergy for restitution of temporalities. The necessities of this prince even drove him to the unworthy, though lucrative, resource of embarking in commerce.

Passing over the reign of Edward V., which on this occasion may be considered as merely nominal; the short period in which Richard III. held the throne is to be considered. It is remarkable for an act procured by the king himself, abolishing the mode of exaction called benevolences; and although Richard afterward levied a contribution in this form, such a violation of a new law, in those times when need was urgent, and the science of finance had made so little progress, was of small importance.

Under the house of Plantagenet finance was little improved, but the principle, that no tax should be imposed without the consent of parliament, became in practice perfectly established, and the fetters of the feudal system were considerably lightened.

HOUSE OF TUDOR. During the reign of Henry VII., the nation enjoyed repose from civil wars, commerce was favoured by the discoveries of Columbus and other adventurers, and by the disposition of the king, who sought to depress the nobles and elevate the commons, and the activity and enterprise of the nation received a new and beneficial impulse. To this king, tunnage and poundage were granted for life, and from his time the customs were considered as a permanent branch of the royal income. Henry, whose great passion was avarice, obtained such large grants from parliament as to occasion insurrections in various counties: he revived the practice of extorting benevolences, under pretence that the laws made in the time of Richard III. were void, he being an usurper, but the benevolence was no longer demanded at the king's mere pleasure, it received, like other taxes, the sanction of parliament: aids were granted to the crown, to marry his daughter, and make his son a knight. Henry received a very large portion with Catharine of Aragon, who was married first to Arthur his eldest, and afterward to his second son; and he increased his revenue by selling out his ships to hire, and by lending out money on

Yet all these resources were

insufficient to allay his thirst of gold; he exerted in their utmost rigour all the means of feudal exaction, and with the aid of Empson and Dudley, two rapacious judges, pillaged his subjects by prosecutions under obsolete or forgotten penal laws. This king died in possession of 1,800,000*l.*, a sum equivalent to at least eight millions in these days, but in his last moments he displayed the agonies of remorse and terrors of guilt.

The ill-gotten treasure of Henry VII., was speedily dissipated by his prodigal successor; grants of the most enormous extent extorted from parliament, a poll tax rating every subject in the kingdom, from the lowest, who had attained the age of fifteen, and who paid four pence, to the duke, who was assessed at ten marks, and large sums raised by other means were insufficient for the king's expenditure. A commission was issued for exacting from the clergy four shillings, and from the laity three shillings and four pence in the pound; but when this attempt met with a resistance which portended rebellion, the king disclaimed the commission, and added it to general causes of Wolsey's unpopularity. From foreign potentates, the king obtained some supplies, particularly for the restitution of Tour-nay to France; and he concluded a treaty, by which, in consideration of 50,000 crowns per annum, to be paid to him and his successors for ever, he agreed to renounce all title to the crown of France. Preceded by necessity, he adopted the expedient of debasing the current coin, and by threats of prosecution and oppression, extorted large sums as benevolences, under the new name of amicable grants. Finally, after many intermediate acts of extortion on the ecclesiastical body, he seized all the revenues, lands, and effects belonging to the monasteries and other religious and charitable establishments, and some of the lands belonging to the bishopricks; these, with the first fruits and tenths, were insufficient to satisfy his perpetual demands, occasioned by continual prodigality; and, however odious might be the oppression which Henry VII., exercised under colour of law, that of Henry VIII., committed in defiance of it, was not more tolerable in its effects, although it permitted the formation of better hopes. Tyranny might expire with the tyrant, but a depraved system of jurisprudence might extend its operation to a period incalculably remote. It may be incidentally observed, that in this reign the profits of feudal sovereignty were abated by the devices of conveyancers; and although parliament endeavoured to restore them to their ancient extent, the statutes formed for that purpose became the means of a directly opposite end.

Edward VI. was prevented by his tender years from taking
a great

a great share in the affairs of government: his ministers, who were themselves rapacious, and in some of their measures imprudent, increased the necessities of the state, and supplied them by injudicious means. Among the least commendable of their efforts were a poll-tax on sheep, and a duty on woollen cloth, both which, after a short trial, were repealed; they also debased the coin to an extent which proved highly prejudicial to industry and commerce. The trade of the kingdom was however benefited by the revocation of a charter granted by Henry III., to a body of foreign merchants, called the Corporation of the Steel-yard; the abuses of justice were punished by heavy fines on judges who acted corruptly, and 400,000 crowns were obtained from France for the restoration of Boulogne. The debt of 240,000*l.* left unpaid at the decease of this monarch, arose from the rapacity of his ministers, who misappropriated the money raised to discharge it; but had his days been prolonged, the people of England confidently hoped for the most blessed effects from his great abilities and eminent virtues.

The crimes and errors which disgraced the reign of the bigotted Mary, were also the cause of great pecuniary distress, which could only be palliated, for it was never remedied, by the most oppressive devices. Her principles were so generally obnoxious to her subjects, that when an application was made to parliament for a subsidy, it was rejected; and many members declared, that it was in vain to bestow riches on a monarch, whose revenues were thus wasted. She was therefore obliged to have recourse to tyrannical extortions to replenish her exchequer. By means of embargoes, compulsive loans, and exactions of a similar nature, she raised about 240,000*l.*; and two years afterwards, contrived to fit out by the same methods an armament for the assistance of her husband, Philip II. king of Spain; but finding it impossible to supply it with provisions, she seized, for that purpose, all the grain which the counties of Norfolk and Suffolk could furnish, without making the owners any recompence. She imitated her brother's example, in endeavouring to borrow money on the continent; but her credit was so low, that though she offered 14 per cent. interest to the town of Antwerp, for the loan of 30,000*l.* she could not obtain it, until she compelled the city of London to join in the security.

The long and glorious reign of Elizabeth, is remarkable for many admirable measures in finance, and tarnished by some equally impolitic and tyrannical. Her occasions for money seldom originated in any vicious or even imprudent measure or design, and the means by which she obtained supplies, were not the devices of her own invention, but powers legally vested

in the crown by the constitution as it then subsisted. The causes of expenditure in the time of Elizabeth were principally the national defence, especially against Spain; the government of Ireland, and contest with the rebels there; the maintenance of a party in Scotland; the assistance afforded to Holland in emancipating itself from Spain; the support of Henry IV. of France against his rebellious subjects; the debts contracted by her predecessors, and which she honourably discharged; and the regeneration of the debased coin; these measures were all grand and patriotic, though the last was not pursued without deviation; but the remaining cause of her expences, her bounties to favourites, was of a nature to leave some stain on her memory, especially as these were not the great and wise ministers who made her government prosperous and glorious, but those individuals who, by the graces and accomplishments of their persons, pleased her taste, or by their flattery soothed her vanity. This was indeed her conspicuous foible; to this may be referred the splendid exhibitions of her court, and the studied attire of her own person, which reached such an excess, that she is said to have left in her wardrobe more than 3000 suits of various fashions and colours.

Her resources were, the dismesne lands of the crown, which were much underlet, and which she frequently chose to incumber rather than apply to parliament for money; the feudal prerogatives, which she exacted with as much rigour as the times would admit, insisting particularly on the right of Purveyance*, which she carried to a great extent; the customs, which were more than doubled during her reign, being farmed by Sir Thomas Smith at 50,000*l.* per annum, who, besides, refunded some of the profits of his former contracts; and the first fruits, tenths, and church lands which Mary had alienated, but which were now resumed. To these must be added the grants of subsidies, and fifteenths by parliament; the extortion of presents from her dependents; the money paid to her by Catholics, and non-conformists, for dispensations from the penalties incurred by not attending the established church; her share of the plunder obtained in war; a large sum which she received in virtue of a treaty respecting Calais; and compulsory loans from her subjects. This latter measure was undoubtedly tyrannical, and would give great offence in modern times, but it was then the undisputed prerogative of the crown, recognized by parliament; Elizabeth had for her justification the notorious fact, that when she or her predecessors had been so far degraded by necessity, as to require loans from

* See Vol. I. page, 165.

any foreign city, as Hamburg, Cologne, or Antwerp, the interest was ten, twelve, or even fourteen per cent. and the security of the sovereign was deemed insufficient unless supported by the city of London, or sometimes by the counsellors of state in their individual capacity. But when the punctuality of the queen in paying the monies she borrowed, both from her subjects and foreigners, had established public credit; loans ceased to be compulsory, and the people were ready to pour forth their individual treasures to relieve the necessities of the crown. In fact, Elizabeth well deserved the confidence of her people, by the evident proofs she exhibited, that not her own advantage, but theirs, was the rule of her conduct, and that, in those points where she carried the doctrines of prerogative to the greatest height, the dignity of the throne, and not personal eagerness for dominion, was the cause. Her contemporary Henry IV. is much celebrated for his benevolent wish, that every peasant in his realm might have a fowl in the pot on a Sunday; the trait exhibited by Elizabeth when she refused a subsidy, saying, "it was the same thing whether the money was in the pockets of her subjects, or in her own exchequer;" is perhaps equally endearing, and certainly more practically benevolent. Nor was this a solitary instance of her patriotic self-denial: she refused, on another occasion, a benevolence offered by the commons, saying she had no need of the money. Such conduct, and such principles met with a merited return. When her crown was in danger, in consequence of the warlike preparations of Philip king of Spain, who fitted out, what he called, an Invincible Armada, for the conquest of England, and the capture of Elizabeth, the spirit and loyalty of the people are hardly to be conceived. The nobility and gentry fitted out forty-three ships at their own expence. London, and the other principal ports in England, voluntarily equipped double the number of vessels that was demanded. Formidable armies were collected without difficulty or murmur. Every direction given for the better security of the coast, met with a prompt and cheerful obedience; and each person, in proportion to his ability, furnished pecuniary assistance, and gloried in an opportunity of displaying his attachment to his sovereign, and his zeal to preserve the liberties and independence of his country.

One profitable prerogative Elizabeth carried to an alarming extent; that of granting or selling monopolies; or the exclusive privilege of trading in such articles as were specified in the patents. The number and importance of the commodities which were thus monopolized, is almost incredible. Among many others, historians mention salt, iron, powder, cards, calf-

Skins, fells, pouldavies, ox-shin-bones, train-oil, lists of cloth, pot ashes, aniseeds, vinegar, sea-coal, steel, aquavita, brushes, pots, bottles, saltpetre, lead, accidences, oil, calamine-stone, oil of blubber, glasses, paper, starch, tin, sulphur, new drapery, dried pilchards; transportation of iron ordnance, of beer, of horn, of leather; importation of Spanish wools, and of Irish yarn, with many others. We are told, that when this list was read over in the House of Commons, a member (Mr. Hackwell) loudly exclaimed, "Is not bread in the number?" "Bread!" said every one with astonishment. "Yes, I assure you," he replied, "if affairs go on at this rate, we shall have bread reduced to a monopoly before next parliament." It is easy to see the consequences of such a system. Trade and industry were greatly depressed. "It bringeth (said a member in the house) general profit into private hands, and the end is beggary and bondage." A single patent, contrived for the advantage of four rapacious courtiers, occasioned the utter ruin of seven or eight hundred industrious subjects. This abuse, and the manner in which so destructive a prerogative was exercised, is one of the greatest blots in the reign of Elizabeth. In vain did parliament interfere; the haughty sovereign would not permit her prerogative to be called in question. In a speech from the throne, at the dissolution of one, she said, "That with regard to the patents, she hoped her dutiful and loving subjects would not take away her prerogative, which is the chief flower in her garden, and the principal and head pearl in her crown and diadem, but that they would rather leave the matter to her disposal." However, not long after, she issued a proclamation for repealing some of the most obnoxious monopolies; particularly on salt, oil, starch, &c. for which she received the solemn thanks of her Commons. At her death Elizabeth left a debt of 400,000*l.*, but this is not to be attributed to any relaxation of her general rules of economy. There was a subsidy then due which produced to her successor 350,000*l.*; the king of France owed her 450,000*l.*, and the States of Holland 800,000*l.*, a large portion of the former sum was ungratefully withheld; the latter in great part liquidated.

The period in which the house of Tudor inherited the throne, is remarkable for the evident relaxation of the feudal system; the progress of mercantile adventure; and the destruction of the powerful resource which sovereigns had ever found in the contributions of the church, which was for ever destroyed by the blind rapacity of Henry VIII., whose rashness in seizing the monastic property occasioned the emperor Charles V. to observe that he had killed the hen which laid him

him the golden eggs. This measure, with the subsequent dissipation of the property the king had acquired, formed the basis of the public security, by rendering the crown completely dependant on the Commons, and enabling these to withhold supply, until assured of the permanence of liberty and justice. Not less remarkable is this period for the foundation by Elizabeth of that public credit, which has since been so rigidly preserved, and wonderfully augmented, which forms the best anchorage for the vessel of state, and on which the subjects of this realm as well as foreigners place such implicit reliance.

HOUSE OF STUART. The first of the Stuarts who ascended the British throne, brought with him the inestimable blessing of an union between England and Scotland. James I., although accustomed in his early years to restrain his expences within the compass of a slender income, was afterward somewhat profuse in his expenditure, and not always just or wise in his means of supply. The king, the queen, and the prince of Wales had each a separate court, and, exceeding the liberality of all preceding sovereigns, James allowed his eldest son Henry, a revenue of 51,415*l.*, equal to at least 150,000*l.* of money at this time; this was a great source of expence, and another was found in his ill-judged and disgraceful bounty to favourites, who enriched themselves and families at the public cost. Less exceptionable causes of expenditure arose from the army in Ireland, the support afforded to the elector Palatine, and the improvement of the navy.

In the procuring of supplies, James shewed that infatuated adherence to the highest notions of prerogative, which afterward cost his family so dear. The demesnes of the crown, still valuable, though perpetually diminishing, were by judicious management made to produce 80,000*l.* per annum, instead of 32,000*l.*, but James encumbered or alienated them to the amount of 775,000*l.* The feudal aids were also demanded with success, particularly those for making his son a knight, and marrying his eldest daughter; the privilege of purveyance was carried to a most oppressive extent, the officers of the crown compelling the people to receive for their goods, less than a tenth part of their value. The customs were greatly improved in the time of James, amounting at the close of his reign to 190,000*l.* per annum; but the attempt of the king to alter the rates without the consent of parliament, occasioned a dispute between him and the Commons, which was not terminated in his days, but was among the causes which produced the woes of his successor. Parliament also granted several aids and fifteenths, but in these acts they began to shew a zealous vigilance over the public purse. An indirect mode of supply adopt-

ed by the king, was the sale of honours. The dignities of baron, viscount, and earl, were to be bought at the respective prices of ten, fifteen, and twenty thousand pounds; and the sums received for the creation of baronets amounted to nearly 100,000*l*. This procedure cannot be justified, but it is extenuated by observing that the purchase could not be made indiscriminately by all persons possessing wealth; the usual requisites of blood being still indispensable. Monopolies were granted in this reign, but the practice received a severe check from the vigour of parliament, who fined the attorney-general 15,000*l*. for drawing the patents, and punished by fines, confiscation, and imprisonment, those who had obtained them. At last, an act was passed, by which all monopolies were condemned as contrary to law and the known liberties of the people; an act which ought for ever to have put an end to so destructive a grievance. Forced loans were raised to a considerable amount, and James silenced the remonstrance of the Commons on the subject, by founding the loftiest notes of prerogative; benevolences too were twice essayed, but not with equal success. From foreign states James drew some money, but it was principally that due to his predecessors: the Dutch paid him 450,000*l*., and France 60,000*l*.; the Hollanders also engaged to allow a sum annually for the privilege of fishing on the English coasts, but this was not productive till the ensuing reign. Fines from offenders in various degrees, which were imposed to a large amount, were remitted, or compounded for at an easy rate. A lottery was first established in the days of James, for payment of the charges incurred in establishing settlements in America, and a project was formed for supplying the crown, by abolishing the order of bishops and selling the church lands; but this resource was left to those who murdered James's successor. The acts of this monarch were essentially injurious to his own family, and for a time to royalty itself; but on the whole his reign was beneficial to the state, by inviting and encouraging those inquiries which afterwards established and purified the constitution. Queen Elizabeth, endowed with courage and wisdom more than belong to man, and surrounded by counsellors of the first ability, speaking the high language of prerogative, rather complimented than offended her subjects, who seeing her feared and respected abroad, and feeling for her the utmost love and veneration, connected her glory with their own, and would have resented rather than promoted a doubt affecting any claim which she advanced: King James, degraded by pusillanimity more abject than ought to characterize a woman, pedantically vain-glorious, yet pitifully feeble, environed by the contemptible minions who made him at once disliked and despised, advancing, both in speech and

writing, pretensions more gigantic than the illustrious Elizabeth had even intimated, provoked inquiry and generated that general disposition to civil at regal authority, which prevented many persons from paying due regard to the virtues of his son, and facilitated the measures of those gloomy fanatics who overturned the throne, and disgraced the British annals by the record of judicial regicide.

The extraordinary expences of Charles I. arose from wars with the emperor of Germany, and with France, both which terminated ingloriously; from one which he waged with his own subjects in Scotland; from the charges he incurred in patriotic endeavours to augment the navy; and from his war with the parliament, which for him had so fatal a termination. In his private expences, though personally frugal, he affected much the state and splendour of a king. He kept up twenty-four palaces, all completely furnished. His collection of pictures was among the most valuable in Europe, and he spared no expence, nay he rivalled Philip IV. of Spain, the master of the Indies, in endeavouring to engross the most valuable productions of the ablest artists.

In speaking of the means by which he raised or endeavoured to raise supplies, the cause of all the ills which afflicted the latter portion of his life is to be developed; it is not fit in this work to enter into large details on that subject; but it may be generally, and not uselessly observed, that there was not one of the unpopular and unjust impositions which he endeavoured to lay on his subjects, which some great lawyer did not warrant by undeniable authorities founded on former practice; yet that the measures of Charles justified the first measures of opposition, few are hardy enough to deny; and that many of them would have been avoided, had he not listened too readily to some of his ministers, no one can doubt. His misfortunes then were only such as must be the lot of every prince who in times of great emergency, which require vigour, decision, intelligence, knowledge of the human heart, and powers to turn every contingency to advantage, employs ministers who, in justification of every act of rigour and oppression, recur to the file for precedents, and think they cannot err if they follow the path which others have beaten before them.

Charles derived part of his income from the demesne lands of the crown; by compounding with those who held any portion of them by defective titles; and by raising on them a loan of 300,000*l*. The grants of parliament during his whole reign were very sparing, and the subsidy no longer retained its ancient value; for although it was a tax on income, and the national wealth was greatly increased, yet the assessors, conciliating
favour

favour by lenity, and contriving every species of evasion, had greatly reduced its product; the clergy also granted eight subsidies, but those amounted only to 20,000*l.* each; the queen's portion was 400,000 French crowns tardily paid; and the Dutch gave 30,000*l.* per annum, for liberty to fish on the coast.

These were tributes to the monarch unquestioned and not unpopular, but of a different complexion were those which are next to be enumerated. Queen Elizabeth drew sums of money by secret compositions from the Catholics for dispensations, but Charles, although the jealousy of the nation, particularly the puritanical part of it, was strongly excited by the circumstance of the queen being a Catholic, openly granted a commission for receiving such compositions; a most unwise and impolitic measure. The duties of tunnage and poundage had been levied without intermission, since the accession of Henry IV., and often without any previous vote of parliament; Charles received them in the like manner, and would probably, like his predecessors, have obtained a grant of them for life; but the commons, anxiously alive to their duty as guardians of the public purse, required as a preliminary, that he should for once desist from levying the duties; the king, alarmed at the thought of conceding a point of prerogative, dissolved the parliament; the controversy was afterward renewed, and determined in a manner extremely unfavourable to the crown. The exaction of the duties was not totally abstained from, but they were granted only for two months; and the grant was renewed from time to time, for very short periods; care also was taken, to assert, in the strongest terms, the exclusive right of parliament to bestow the grant; and in the preamble to the bills that were passed, all pretensions that the crown could make, to levy the duties by its own authority, were for ever annulled. The levy of ship-money was founded on the precedent established by Elizabeth, when the Armada of Spain menaced the coast; then every maritime town was required to furnish its quota, not of money but of ships and men, and this demand was so moderate and the general enthusiasm so great, that the city of London doubled the proposed supply. Far different was the case when Charles, encouraged by Noy, his attorney-general, attempted to extend a similar requisition all over the realm; the disgraceful abolition of the levy, and the immortality which Hampden acquired by resisting it, are too well known to be here detailed. Of a similar texture, and similar in its suppression, was the attempt to oblige every county, without the authority of parliament, to raise and equip a certain number of soldiers. Another measure in which Charles was very ill advised, was the effort to counteract or evade the recent statute against monopolies,

polies, under pretext of granting patents for new inventions. Not only salt, soap, leather, and other useful articles, were put under harsh restrictions; but grants were made out for gauging red herrings, for marking butter casks, and for gathering rags. The king, afraid of the consequences, or ashamed of having adopted such ridiculous expedients for raising money, abolished about thirty of these destructive patents, when he undertook the first expedition against Scotland; but the people were not satisfied with a partial concession, and the long parliament had no sooner assembled, than it annulled all the remaining monopolies; and as a proof how much they detested so illegal a measure, expelled at once such of its members as were at all concerned in them. Loans of all kinds were extorted, and those who resisted the demands of the monarch were punished by imprisonment, or by the more ruinous method of having soldiers illegally quartered on them; and the ill-advised and ill-fated prince, went so far as to attempt raising money by commissioners appointed by himself, and independent of parliament. Although the spirit of the House of Commons obliged him to cancel this commission, yet many arbitrary measures were pursued; large fees were annexed to new invented offices; every county was obliged to maintain a muster-master, appointed by the crown, for exercising the militia. The vintners were driven, by the terrors of fines and prosecutions, to submit to an illegal imposition on all the wine they retailed; an ancient duty for furnishing the soldiery with coat and conduct money, which had long been abolished, was revived; it was intended to coin base money, and to circulate it by proclamation. Heavy fines were also imposed in the star-chamber, and high commission courts; Sir David Fowles was amerced in 5000*l.*, for dissuading a friend from compounding with the commissioners of knighthood; thirty thousand pounds were exacted from those who had trespassed on an obsolete law, against converting arable land into pasture; encroachments on the king's forests were punished in a similar manner; proclamations were issued, commanding the nobility and gentry to retire to their country seats, and not spend their time idly in London, and if convicted of transgressing this arbitrary regulation, they were severely mulcted in the star-chamber: it was contended, that proclamations had equal authority with laws; and such as ventured to disobey them, were heavily fined, and, in some instances, condemned to the pillory. Another expedient, though sanctioned by law and the practice of remote times, was not less, nor less justly, odious; it was that of compelling all who possessed 40*l.* a-year in land to receive knighthood, or pay a heavy composition. If no other reason could have been alleged

alleged against this proceeding, the altered value of money since the reign of Henry VI. when the rate was fixed, would alone have made it an intolerable hardship on those whose estates barely amounted to, or little exceeded 40*l.* a-year.

But all these measures, and all the evil intentions imputed to the unfortunate king, although they well justified a strenuous parliamentary opposition, afforded no excuses for the atrocious act which terminated his days. The principles of despotism came to him by direct inheritance, and his predecessors on the throne had avowed and acted on them to a greater extent, without the same or similar motives. They had not to encounter in parliament a factious and obstinate opposition, but found their behests received with prostrate reverence: they were not fettered by the continual efforts of the legislature, to restrain the exercise of prerogative, but statutes of most positive prohibition were dispensed with to gratify the wants, or desires of the sovereign. It was surely time that the representatives of the nation should be raised from this abject state, but a vigorous parliamentary opposition would have been fully sufficient to effect the purpose, especially when the voice of the whole people, raised in behalf of their dearest interest, could be brought to support those who made exertions in their favour. Parliament could not complain that they wanted sufficient power, when they could procure the abolition of the court of chivalry and the star-chamber, and could obtain the recognition of the famous petition of right, which declared that "no gift, loan, benevolence, tax, or such like charge should be exacted without common consent by act of parliament." Nor was it necessary that the wants of the king should remain unsupplied, unless he were at liberty to oppress the subject: an honest application to the true principles of finance would have indicated many means of raising money from the increasing luxuries of the times, a specimen of which was given in the tax now first imposed on cards. And it should not be forgotten in speaking of this unhappy king, that his total income, including all that was produced by ship money, and other illegal means, did not in years of war amount to 900,000*l.*, of which more than 200,000*l.* were raised by the devices which parliament so much reprobated, but which a decent liberality on their part would have rendered unnecessary.

INTERREGNUM. The period termed the Interregnum, or Commonwealth, will be ever memorable in the annals of finance; in the first place, as having furnished most of the permanent modes of taxation now in use, and in the next, as disproving, by irresistible experience, the saying attributed to Milton, that the trappings of monarchy would defray all the charges

charges of an ordinary republic. The time in which the property of the people of England was subject to the disposal of an authority exclusive of the lords and of the crown, may be considered as commencing with the sessions of the long parliament: they voted six subsidies and a poll-tax, for the purpose of disbanding the armies; but the product was confided to the management of parliamentary commissioners, and not, as formerly, paid into the treasury. When hostilities against the king were considered necessary, voluntary contributions produced incredible sums; the plate of almost every inhabitant in London was brought in, to be coined for support of the army; no article, however mean, no ornament, however valuable, was spared; even the thimbles and bodkins of the women were not withheld.

When these ceased to be productive, the parliament levied assessments on personal and landed property. These assessments varied, according to the exigencies of the times, from 35,000*l.* to 120,000*l.* a month. They were found so productive, and in every respect so much superior to the ancient mode of subsidies, that under the denomination of a land-tax, they have since formed a considerable branch of the public revenue.

To recruit the armies, every person was obliged to retrench a meal in a week, and pay the amount into the treasury; and this strange tax produced for six years 100,000*l.* a-year.

To the long parliament we owe the establishment of the excise, the plan originating, as is supposed, with the famous Pym. It was at first laid on liquors only; and it was solemnly declared, that at the end of the war all excises should be abolished; but the contest continuing longer than was expected, this obnoxious mode of levying money was extended to bread, meat, salt, and many other necessary articles. The excise on bread and meat was afterward repealed.

In the time of the Commonwealth, considerable additions were made to the revenue of the customs by the duties on coals and currants. Four shillings a chaldron on coals levied at Newcastle, brought in about 50,000*l.* The customs and excise, notwithstanding the destruction with which civil wars are necessarily accompanied, had become so productive, that Cromwell, in 1657, was offered 1,100,000*l.* a-year for a lease of both the branches.

The post office, as already has been mentioned, began now to be a source of revenue; all the feudal prerogatives of the crown, except the odious one of purveyance, were exercised with rigour, licences for inns and ale-houses, the profits of which had been claimed by James I. as a monopoly, but wrested from him by parliament, were made a source of revenue; the

the sequestration of the income of some public offices yielded a large supply; the lands and chattels of the crown were sold, though at a low rate; all ecclesiastical property including even glebe lands was in a similar manner disposed of; the tythes were sequestered for the public use; the royalists were either put to death and their estates confiscated, or obliged to pay heavy ransoms, and even persons suspected of attachment to that party were termed *malignants*; and under colour of this crime, it is said that one half of the real and personal property in the kingdom was sold and sequestered. Under so military and tyrannical a government, a variety of oppressive exactions must necessarily have taken place. Among many others, that of free quarter was particularly complained of. The soldiers were billeted on private houses; paid nothing for their maintenance; were spies on the actions of those upon whom they were quartered; and though guilty of the most shocking abuses, their crimes were only subject to the cognizance of their own officers; no civil court, or magistrate, daring to interfere. But when Cromwell assumed the government of the state, a general system of oppression was for some time put in practice. The whole kingdom was divided into twelve districts, each of which was intrusted to the care of a major general, who was empowered to levy any tax the Protector thought proper to impose. An edict was issued, commanding the exacting of the tenth penny from all the royal party; and this oppressive tax, known by the name of *decimation*, Cromwell's military substitutes very rigorously enforced. The whole country was exposed to their extortions; hardly any distinction was made, nor were the firmest friends to the existing government always exempted.

By an authentic document it appears that in the period of nineteen years which elapsed from the meeting of the long parliament till the restoration, 83,331,198*l.* were raised, making an average of 4,385,850*l.* per annum. But supposing all that was possessed and sold by government to be public property, and considering at what rate it was sold, and how much was given away to gratify beggarly intriguers, and embezzled by unprincipled agents, it must be evident that the nation was plundered to an infinitely greater amount. It is not necessary nor desirable here to particularize all the means used to convert to private advantage this immense revenue. The necessary and honourable expences of government, besides the civil administration, were incurred in the suppression of hostile movements in Ireland and Scotland, in the wars with Holland and Spain, to which may be added the sums expended for secret intelligence, in which the Protector was most wisely liberal. Large however as were the sums extorted from the nation, the

army

army and navy were in misery through the non-payment of arrears, and Cromwell died 2,274,290*l.* in debt. Such was the saving effected by a government, established on the ruins of one which cost at the utmost 900,000*l.* year.

RESTORATION. The restoration so ardently and reasonably desired by the people at large, was not suddenly productive of all the good effects which were expected. The national expences were considerably reduced, but still contentions were perpetually maintained between the wants of a thoughtless, extravagant monarch, and the jealousies of a parsimonious parliament. The reign of Charles II. first exhibited the formation of a regular peace establishment, or a provision, even in times of peace, for the national protection and defence: whence have arisen permanent naval, military, and ordnance expences. In Charles's reign, the navy required large sums annually expended to counterbalance the force maintained by Holland, and that which Lewis XIV. was so assiduously employed in creating; a regular army in time of peace was also now for the first time maintained, and although it never exceeded 8000 men, and was sometimes as low as 4000, the public felt much jealousy and alarm, and the House of Commons pronounced it contrary to law; the ordnance was also a charge on government, but very moderate in comparison with that of succeeding times. The civil list expences amounted to 462,115*l.*, and the general expenditure was within 1,200,000*l.*, the sum which parliament had first voted, but which was never fully made up. There were besides many incidental expences, arising from the necessity of replacing the property of the crown alienated by the republicans, the debts contracted by the late king during the civil war, and by Charles II. during his residence on the continent: and a still large debt was due to those loyal individuals who had sustained such cruel losses by their unexampled firmness in adhering to the royal cause, but this was never satisfactorily discharged. The disbanding of Cromwell's army was attended with much expence in paying their arrears, and Charles, who had learnt during his exile, the value of such a fine military body, yielded with regret to the prudent advice of Lord Clarendon, in omitting to retain it in his service. The garrison of Tangiers, the dowry received with Catharine of Portugal, was for some time a source of great expence; as were the wars which arose in the course of the reign. To these must be added the profuseness of Charles himself, a quality which obscured the excellent talents he was allowed to possess; and deprived his character of every pretence to virtue or patriotism. This propensity was checked during the latter part of his life, with a vigour which demonstrated that his previous errors had arisen only

only from a misconception of his duties, and a miscalculation of his reasonable expectations.

In the project of supply, the Commons acted with sufficient liberality when they allotted to the king 1,200,000 *l.* a year; it was far short of the monies received by Cromwell, but the people of England, when they desired freedom from the yoke of pretended liberty, aimed at the establishment of a beneficial and constitutional rule, and not at the exchange of one tyranny for another. The parliaments, however, acted unwisely, as well as unjustly, in not providing effectually for the supply of the sum they had voted; they exhibited a mean jealousy in suffering the fear of the king's independence to step between their promise and its execution, and are intitled to no small share in the blame due to the king's subsequent want of conduct, since by rendering his income inadequate, they justified his incurring debts; and the extent of that pernicious resource no individual or public body can calculate.

To the support of government in this reign were allotted the customs, which were greatly improved; the feudal prerogatives were finally and utterly abolished, and in their stead, a permanent excise on beer, ale, and other liquors, and the profits of wine licences, were permanently settled on the crown; a tax of two shillings on every hearth in houses paying to the church and poor was imposed, and very much, though perhaps unreasonably, decreed. By these means less than 1,100,000 *l.* was obtained as an ordinary revenue. Occasional grants were made by parliament, the amount of which was raised in different ways; there were three unproductive and justly unpopular poll-taxes; the customs and excise were augmented, but disputes between the king and parliament prevented this augmentation from being permanent. Subsidies were in this reign, for the last time, imposed, and it was evidently become necessary to supersede a mode of taxation, in which persons whose estates were known to be worth 2000 *l.* or 3000 *l.* a year, did not pay above 16 *l.* for four subsidies. Land taxes supplied their place, being collected monthly under the name of assessments, and for one purpose an imposition was laid on personal property, being fifteen shillings on every hundred pounds belonging to bankers; the same sum on every hundred pounds lent to the king at above six per cent. interest; six shillings per cent. on all personal estates; two shillings in the pound on the salaries of all offices and places, to which was added a shilling in the pound on lands and mines. Stamp duties were also first imposed in this reign, and never afterward entirely superseded, though, for a time, suffered to expire.

These were the regular means by which the king obtained supplies;

supplies; he also derived some aids from adventitious, and others from exceptionable sources. He received, besides Tangiers in Africa, and Bombay in India, 250,000*l.* in part of 500,000*l.* promised as the portion of his consort; and royal domains were sold to an uncertain amount, probably about 500,000*l.* In the disgrace of selling Dunkirk to France, the parliament must share with the king, as their jealousy and parsimony obliged him to conclude a bargain, which, for 336,773*l.*, divested him of that dominion; but the infamy of receiving a pension from France, and all the baseness and duplicity to his allies which ensued from it, were peculiarly his own. The sums which he thus obtained amounted to 950,000*l.*, and the share which he retained of the prize-money and other advantages during the Dutch wars amounted to 640,000*l.* In 1672, by advice of Lord Clifford, he shut up the exchequer, and instead of paying the bankers and others who had advanced money on the credit of parliamentary votes, their principal, he obliged them to receive the interest only, at six per cent., a fraud which procured him 1,328,526*l.*, at the expence of ruining many of his too confiding subjects, and greatly injuring public credit. With such an instance in view, it would be difficult to believe that Charles would have been restrained by principle from any illegal extortion, but the constitution was now too well understood to allow much success in such efforts; an arbitrary duty was laid on coals, under pretence of providing convoys during the war with Holland; and when the king, in consequence of the imprudence and misconduct of those who demanded the exclusion of his brother from the crown, had obtained a complete victory over that formidable party, and, indeed, had become almost master of the liberties of the people, he compelled the different corporations to surrender their charters into his hands, and exacted considerable sums previously to their restitution. By all these means, he gained an annual revenue of 1,800,000*l.*, a sum which, if regularly granted and prudently applied, would have been sufficient to answer all his purposes. With all the faults and vices of this reign, political liberty and finance received many improvements; some relating to the latter having been mentioned, and two others deserve notice. The clergy were no longer left to tax themselves as a separate body, but being now represented in the House of Commons by voting in the election of county members, were assessed like other subjects of the realm; and the supplies were no longer voted in a general way, but separately appropriated by parliament to the various purposes they were intended to effect.

James II. began his reign as if predetermined to justify those who had sought to exclude him from the throne, and furnish

every possible motive to those who afterward expelled him from it. Although dissuaded by his council, he issued a proclamation, commanding the payment of the customs and other taxes as usual, without waiting for the assent of parliament; and in his first speech to that body, he made them understand that they were not to attempt securing frequent meetings by granting small supplies; "I must tell you plainly," he said, "that such an expedient would be very improper to employ with me; and the best way to engage me to meet you often, is always to use me well." The parliament however granted this king 2,000,000*l.* per annum, a larger permanent income than had been allowed to any of his predecessors. Had James been at all master of himself, and sought the establishment of the religion to which he was so bigotted, and the tyranny, of which it is the best support, by slow and cautious means, it is much to be feared that success must have crowned his measures. His very virtues were calculated to give effect to such a project; his frugality would have exempted him from making frequent application to parliament, and this circumstance would have secured him the love and confidence of a large portion of the people; his zeal for the advancement of the navy was evidently wise and patriotic, and calculated to gain popularity; and the standing army of 30,000 men which he had established, might, with cautious management, have been made subservient to any purposes. The impatient temper and undisguised tyranny of James hastened the revolution, and rendered its accomplishment easy, by combining against him, in every class, a strong and firm party. The operations of finance in his short reign were not considerable: he received one supply of 400,000*l.* to suppress the rebellion of the Duke of Monmouth, and in 1685, one of 700,000*l.* was voted, but the king, apprehensive that the Commons would interfere in his pretended prerogative of dispensing with tests, dissolved the parliament before the bill passed.

STATE OF FINANCE AT THE REVOLUTION. From this period, it is not intended to notice the financial operations of each reign; for the system of funding, which took place soon after the revolution, totally changed the manner and purpose of supplies. It may, however, be proper to remark from the foregoing statement, that before the funding system had begun, the origin of almost every species of taxation was laid, and its great principle developed. The customs, excise, land-tax, subsidy or income-tax, post-office, stamps, licences, house-tax, and assessments on some particular luxuries, had all been brought into use. Modern improvement has done little more than extend their application to new objects, facilitate the collection, and prevent

prevent frauds in those who pay, and those who collect. Taxation is now wound about every object, and every act of life; and many are apt to consider the situation of the country as far worse than in ancient times, when sums nominally small formed the whole mass of annual expenditure; but without entering into the wide field, to which the discussion of this topic would lead, it may be proper to mention, in the first place, the advantage which has been acquired in the establishment of the great constitutional doctrine, that the subject shall not be assessed, but with the consent of his representatives; in the next, to repeat that the modes of taxation now in use, were for the most part discovered before debts were incurred: and lastly, to mention, for it will be too long to describe, some of the most degrading, burthensome, and tyrannical modes of acquiring property from the people, which have vanished before the improved system of modern times. First, was the property vested in the sovereign, which in the days of Edward the Confessor amounted to 1422 manors, besides other lands and quit-rents, but was afterward greatly augmented; the royal forests, which although not productive of immediate rents, were by the forest laws rendered snares and engines of oppression to the people residing near them; the king possessed at one time sixty-eight forests, thirteen chases, and seven hundred and eighty-one parks, in different parts of England; he had also the right to mines, including the entire property of all the metals, if they contained the least portion of gold or silver. Next were the feudal prerogatives, many of which did not vest in the king alone, but extended to others, who were lords of fiefs. The chief of these were included in the right of feignory, which supposed the king proprietor of all the land in the realm; and from this right branched out the profits of escheage, quit-rents, aids, reliefs, wardship, or the property in the income of an heir's estate till he attained the age of twenty-one, marriage, or the right of selling a ward in wedlock, fines of alienation, and escheats. Besides these were the *bona vacantia*, as treasure-trove, waifs, and various other minuter objects. All the other prerogatives of the crown will be seen in the preceding pages to have been at different times sources of undisputed profit; the military prerogative, in plunder, tribute, and the redemption of persons and places captured; the judicial, in fees both legal and extorted, from suitors in courts; the political, in the sale of offices, charters, and titles; the inquisitorial, in the odious right of purveyance and pre-emption, which was founded on the supposition, that the king was making a progress through some part of his dominions, to inquire into its condition; and the commercial, in the fees for the establish-

ment of marts, the profit of coining, and the granting of patents and monopolies. The king's right to the service of his subjects was converted into an engine of oppression, by employing those who would not supply compulsory loans on ruinous services; and his ecclesiastical prerogatives gave him a strong hold on the property of the church, by corodies, extra parochial tythes, and the profits of bishoprics during vacancy. From the oppressive effect of all these, the kingdom is now happily relieved; if any are nominally retained, they are in fact of so little importance as to be rarely felt, and generally unknown. Still more effectually are abolished those royal extortions, of which occasional mention has been made; of them not the slightest vestige remains. Among these were the oblations, or fines, without which no man could claim freedom in his most ordinary actions, or prosecute with success his most undoubted rights; amercements, which were arbitrarily imposed on individuals, or communities, for slight offences, or even acts in themselves indifferent; talliages levied at pleasure on the tenants of royal demesnes, in which all the great towns were ordinarily included; and the farming of counties, by which all the people of the kingdom were subject to rapacious exactions. To these should be added the extortions of popery; and a notion may be formed of the load of oppression from which the nation was gradually relieved. Even the modes of taxation have undergone such a reformation in principle, as makes a considerable deduction from the pressure occasioned by its present extensive amount. Voluntary contribution being no longer resorted to, neither the rage of government, nor the torture of public opinion, can be used in forcing a supply. Before gold and silver were plenty, taxes were frequently levied in kind, an operation peculiarly injurious, as the commodities were sold raw to foreigners, and the people were thus deprived of the very elements of industry. Among the most odious taxes, to which government in its less perfect state had recourse, were the poll tax and hearth money; the objection against the latter was, that it subjected the interior of a person's dwelling to the visitation of revenue officers; the objection was perhaps overstrained, but as it was generally received, the new government, after the revolution, acted wisely in abolishing the impost. Popular opinion is not, however, a safe criterion in matter of revenue, for many taxes which are both just and productive have been assailed by violent public clamour, while one of the most popular ever imposed was that which lay for so many years on the Jews, subjecting them to the extortion of a separate exchequer, and finally driving them from the realm.

Before the revolution, every mode which can be generally devised,

vised, for discharging the expences of government, had been essayed in England, and the inconveniences of each had been sensibly felt. Some monarchs, when provided with the means of supporting their government in ordinary times, had relied for supply in case of war, or other emergency, on an accumulated treasure; but besides the numerous objections which evidently present themselves against the subtraction of a large portion of money from circulation, a hoarding monarch is little calculated to be a favourite with a generous people. When the possession of money becomes an object of intense desire, the character of the prince who is influenced by that passion is blended with every act of his government, and always in an unfavourable manner, since the obtaining of money from the subject must frequently, in such cases, be accomplished by craft or violence, and either character will be a just object of popular odium. The rapacious and tyrannical Conqueror, who plundered without disguise or pretext, was not more, or more justly, detested than the crafty and cold blooded Henry VII. who robbed the people under colour of law; and in order to gratify his darling avarice, leagued with informers, and became the patron of pettyfoggers. How different from these, the noble minded Elizabeth, whose patriotic and disinterested saying has already been recorded. Yet Elizabeth was not less lofty in her notions of prerogative than any of her predecessors; but she, dying without an accumulated treasure, left to her successor the task of conciliating, or awing parliament, in order to obtain supplies, while the treasures of William, seized by his sons according to their convenience, enabled them to usurp the throne, and violate the order of succession; and that of Henry VII. falling into the hands of his intemperate successor, gave spurs to his ever violent passions, and energy to that tyrannical disposition, which, for want of being checked by early necessity, produced many acts disgraceful to the British annals.

The raising of supplies within the year appears, at first sight, to be the most eligible plan for a nation to pursue; but those who regard with attention the history of those periods, in which that system prevailed in England, will perceive with regret and shame, that the constant disputes between the sovereign and the commons must have rendered the nation contemptible in the eyes of foreign powers, and its government insecure and dependent. The glorious projects of Edward III. and Henry V. however popular, were delayed, and, but for events almost miraculous, must have been frustrated, through the parsimony of the commons. In fact, in such a system of government, the welfare of the nation must depend entirely on the estimation which happens to attend the sovereign, or his minister; and if

the state is free, the necessity of securing popularity will much interfere with the magnanimous spirit, which is necessary to preserve its honour, and its external advantages. The monies expended by government are not devoted to the mere aggrandizement of the monarch, but the general good of the people; but it would be extremely difficult, to engage the people in an expensive contest, for support of the national honour and prosperity, if the sacrifice to be made must produce great immediate inconvenience to individuals, and occasion greater privations in one year of war or difficulty, than had been sustained in many of peace, however insecure or inglorious. In fact, when it was professed, that the supplies should be raised within the year, it was ever found that the vote did not create the money, and therefore some anticipation, by means of credit, was necessary. The credit, when legal or constitutional, was limited to the amount of grants already provided; but need, combined with arbitrary power, occasioned the forced loans which have already been so often mentioned, and a complaisant or slavish parliament has been known to make a law, declaring the securities given by the king to the subjects void, or in form giving and granting to the king the money which individuals had lent him under the most sacred guarantees. It was also a mean of keeping many sovereigns in a state of difficulty and distress, for those who afterward became shamefully indifferent about their own debts, were often superstitiously exact in paying those of their predecessors; and thus incurred pecuniary difficulties from the very commencement of their reigns. Another effect of these temporary loans was, that the lenders became extravagant in their demands of interest, and insolent in their requisitions of security. In proportion to the wants of the sovereign, these demands rose, and while interest to the amount of 12 per cent. or more, was rendered for money, the extortionate lenders required the collateral security of the city of London, or of the houses of parliament; nay, sometimes the crown, robes, jewels, and other regalia, were pledged for money.

ORIGIN OF FUNDING. Under such circumstances, when loans have been necessary, it has not been unusual to mortgage the produce of taxes; but as the loans were only temporary, the expedient rather gave a hint, than furnished a precedent of a permanent system. During the reign of Charles II. a clause of credit was inserted in many acts, empowering the officers of the exchequer to borrow money from all persons, whether natives or foreigners, on the security of the subsidy that was granted; and a law was passed, entitled, "An act for assigning orders in the exchequer, without revocation," which enabled the king to borrow money on the credit of any branch
of

of the revenue, because in the words of the statute, "it had been found by experience, that the powers of assigning orders in the exchequer by former acts, without revocation, had been of great use and advantage to the persons concerned in them, and to the trade of the kingdom." The shutting of the exchequer, in the year 1672, laid the foundation of a permanent debt; for the king having thus secured the undue possession of 1,328,526*l.*, issued letters patent, charging his hereditary revenue with the interest at six per cent. amounting to nearly 80,000*l.* per annum. Even the payment of interest was afterward stayed, and the parties being driven to a legal process, after a very long delay, obtained a composition, by which interest at three per cent. on the original debt was charged on the hereditary excise, but the principal was to be redeemed on payment of 664,263*l.*

This sum was, in fact, the only part of the present national debt which was due at the revolution; but it must not be too hastily inferred, although the opinion is advanced by some enemies of that glorious event, that the incurring of a debt was not matter of necessity, but a mere contrivance to secure the authority of the new sovereign. The state of the realm at that time, if candidly considered, furnishes a sufficient answer to such an objection. The government was weak, and its affairs dishonestly administered, because faction prevailed in every department, and immense sums were misapplied, or embezzled. The house of commons were influenced by new and dangerous principles, in measures of supply. Those who considered the government unstable hoarded their money, and out of 16,000,000*l.*, at which the existing sum in the nation was computed, from five to six millions are said to have been hoarded. The coin itself was in so bad a state, that 2,415,140*l.* was the loss sustained by the re-coinage. Every species of credit was at the lowest ebb; bank notes were at 20 per cent., and tallies at 40, 50, nay 60 per cent. discount. The expences of the revolution itself were not inconsiderable. To the Dutch alone were voted 600,000*l.* for the armament they had fitted out, in order to bring about that event. The reduction of Ireland was attended with great charges: nor were the partizans of the dethroned monarch driven from Scotland, without some bloodshed and expence. The money that was thus required to place William on the throne of the three kingdoms, would have fully defrayed the charges of at least one, if not of two campaigns. The honourable and necessary wars, in which the deliverer of England engaged, were also extremely expensive, owing not less to the great power of the common enemy, Lewis XIV. than the languid manner in which the common cause was supported

ported by some of the allies. Whoever considers, therefore, the state of our revenue, the magnitude of our expences, and the various circumstances, both foreign and domestic, above enumerated, must clearly perceive, that contracting a public debt was a matter, not of choice, but of necessity. Whether the funding system has been beneficial or injurious to the nation, is among the problems which have occasioned, and ever must create, great differences of opinion, and would require more detailed arguments than can be introduced into this work; but certainly many, if not most, of the inconveniences complained of as resulting from the present national debt, arise from the inevitable inexperience of those who, for many years after the system of the funds was adopted, conducted a scheme so new and difficult.

FIRST LOANS. The government of William III. adopted at first the plan of Charles II. borrowing on the anticipated produce of grants voted by parliament, without establishing a fund for payment of interest. In 1692, an attempt was made to borrow a million upon annuities for ninety-nine years, for which 10 per cent. was to be given until the 24th June, 1700; and 7 per cent. afterwards, with the benefit of survivorship, for the lives of the nominees of those who contributed. So low, however, was the credit of government at that time, that even on these terms only 881,493*l.* 12*s.* 2*d.* could be procured. In 1693, a million was raised on short annuities, and as every subscriber received 14 per cent. for sixteen years, with the additional benefits of a lottery, so advantageous an offer was eagerly grasped at. Some money was also borrowed during this reign on annuities for lives; and 14 per cent. was granted for one life, 12 per cent. for two lives, and 10 per cent. for three. Such terms were in the highest degree extravagant, particularly as no attention was paid to difference of ages. In this reign, the Bank of England and the East India Company were established: they paid to government the sum of 3,200,000*l.* for which they received an interest of 8 per cent.; and as the taxes imposed to defray that interest were to remain until the principal, and all the arrears of their respective annuities were discharged, and consequently were unlimited in their duration, this naturally paved the way for those perpetual annuities which afterwards took place.

FUNDING ESTABLISHED. The success with which the Bank of England was attended, had encouraged some individuals to form the project of a *land bank*, with a view, not only of raising a considerable sum for the use of government, but also of lending money on land securities, at low interest, a part of the scheme being to give 500,000*l.* on mortgage, at 3*l.* 10*s.* per cent.

cent. to be paid quarterly, or 4 per cent. payable half yearly; but the project did not succeed. The temptation, however, of mortgages at so easy a rate, induced the landed gentlemen to agree to the establishment of perpetual taxes, to defray the interest of the money intended to be raised. The statutes in the year 1695-6 furnish the first example in our history of this climax of financial invention.

Such were the proceedings of government up to the period when the system of borrowing money on the permanent security of the taxes, became thoroughly established. Volumes have been filled with discussions on the good or evil tendency of this plan, and every topic of encouragement and alarm has almost been exhausted in its eulogy or censure. On one hand it has been asserted as a kind of political axiom, that national debt is, in England, but another term for national greatness; while on the other, prophecies have been repeated till they are to many become objects of ridicule, that at some period the load of debt will be too great for the government to struggle with, and that, at last, a general insolvency must close the account. Much of the ridicule attending these prophecies has been occasioned by the positive manner in which periods have been fixed for this completion of disaster; which have arrived and passed again, and again, still leaving the nation in a state of wealth and prosperity, of which no previous example had existed: yet the too sanguine assertions made on the other side cannot be admitted without qualification, when it is recollected, that of late, necessity has enforced the raising of a part of supply within the year; and that extraordinary measures have been adopted for the purpose of taking up a portion of floating stock, in order to prevent its too great depreciation. Among the advantages arising from the funds which have been least insisted on, is the cheap and certain security which they afford to persons in subordinate situations in life, for the produce of small savings, and the receipt of a certain interest without any danger to the capital. In former times, the individual in humble life, as an inferior farmer, or tradesman, a clerk, or other person employed in trade, or a servant in a family, when he had by economy, or by a legacy, or other accident, become possessed of a small sum, was obliged to hoard it, without hope of its producing profit; or to lend it, with all the risque attending loans to individuals, and the expence to be incurred on one side or the other, of a legal security. In these times, supposing the three per cents. to be at 60*l.*, a person possessing no more than twenty pounds, may at the expence of two shillings and sixpence, secure an interest of twenty shillings a year, and add to his capital from time to time by any sums, however minute,

which he may accumulate ; and if he is desirous to receive his principal, it is returned to him without delay, and without hurting the delicacy, or interfering with the prosperity of any one, as easily as it was lent. The greatest evil which is apprehended from the increase of the national debt, is the perpetual augmentation of taxes, which, while they enhance the price of the first materials of commerce, cause a proportionate advance in the price of labour ; and must, although the government duties are allowed as a draw-back on exportation, enable foreigners to undersell the British merchants in the market. Although this apprehension has not yet been realized, it would be most unwarrantably presumptuous to say, that it never can ; but it is materially impeded by the extensive capital, unrivalled ingenuity, and unblemished honour of British manufacturers and merchants ; and will, it is trusted, as well as all other mischiefs to be apprehended from the national debt, be finally averted by the wise measures hereafter to be described under the title of Sinking Fund.

LOANS. In times of peace, or when no extraordinary exigency obliges the state to demand from the public unusual supplies, it is understood, that the permanent and general taxes will be sufficient to defray all expences ; but when war is either made or menaced, or in the first years of a peace, when all the outstanding accounts are not yet made up, it is usual for the minister to supply the deficiencies by a loan. The duty of the chancellor of the exchequer in explaining to the house of commons the nature of the supplies, ways and means, and the committees constantly formed for the investigation of them, have already been mentioned. The terms on which a minister can make a loan, depend on various circumstances ; the facilities of raising money ; the state of public opinion with respect to affairs in general ; and the popularity of the individual, with whom the monied men are to negotiate, are those which produce the greatest effect. When the amount of the intended loan is communicated to the merchants and bankers of London, they form separate classes under the head of some known monied man, or company ; and each leader of these bodies attends the minister at a given day, proposing in writing the terms on which he, for himself and friends, can make good the sum required. The form of this proposal generally supposes a certain stock, either three or four per cent. at a certain value ; and terminable annuities, at another value ; according to their calculations, the minister estimates the proportionate benefit or disadvantage which would accrue to the public from the acceptance of either proposal, and in course, closes with that which furnishes the required sum at the lowest rate of interest.

Such

*Such is the modern way of raising supplies; others have been resorted to by various ministers; but this is found to be most popular, most just, and in the end most beneficial. It has been objected, that combinations may be formed to defraud the public; but, in fact, the rate of interest has never been exorbitantly advanced, nor has the nation any reason to complain of a measure so open and liberal; consistent at once with an enlarged system of commerce, and a government founded on freedom. In the reign of William III., when loans were first proposed, attempts were made to raise money at only 6 per cent. interest; but it was found necessary, the very same session, to offer 7 per cent.; and, from the year 1690, during the remainder of the war, 8 per cent. was uniformly paid. In the late, tremendously expensive, contest with France, the interest on one loan amounted to 6*l.* 4*s.* 9*d.* per cent.; but this was deemed an alarming circumstance, and occasioned some measures for taking a portion of the floating stock out of the market, and raising the supplies within the year; but with all the difficulties in which the nation was occasionally involved, and under the operation of all the mistaken principles, which conspired to alienate and terrify a portion of the public, the national credit stood so high, that the average interest of ten loans, was only 4*l.* 15*s.* 6*d.* per cent. Yet it is not to be supposed, that persons possessed of large capital can advance the incredible sums frequently required by government, without strong motives of personal advantage. There are other circumstances, unconnected with the general effect of a loan on the public, which constitute what is termed a *bonus* or benefit to the contractor. The bonus arises in part from the allowance in temporary annuities, which are considered as being sold by the minister somewhat too cheap, to make the loan acceptable; and from the periods of payment of the sums subscribed, which are so divided as to accommodate the purchaser, and render his portion of the loan saleable in the market. When the subscription is full, the list of names, with the sums allotted to each, is sent to the bank; and as soon as conveniently may be, after the subscription is closed, receipts are made out, and delivered to the subscribers, for the several sums by them subscribed: and for the convenience of sale, every subscriber of a considerable sum has sundry receipts for different portions of his whole sum, that he may the more readily part with what share he thinks proper; and a form of assignment, which being signed and witnessed, transfers the property to any purchaser. Then if a person has subscribed in the list accepted by the minister, any given sum, and is desirous to be eased of a portion before any part of the principal is paid in, he tenders it at the market, and generally sells it for a moderate premium. The completion*

completion of the loan is generally made by instalments at given distances; and when any of these are paid, a receipt issues to the individual, and if he sells any part of his share after that, he expects to be allowed for the instalments already paid, with a premium if the loan bears it, or making a deduction if the the public opinion renders that necessary; the interests disposed of in either of these are termed *scrip*, the whole undivided loan is called *omnium*. The interest of each loan, when funded, is to be met by taxes, which the minister proposes in the House of Commons, and his speech, or scheme, on this occasion, is called *the Budget*.

NATIONAL DEBT. These borrowings by successive ministers, having accumulated from the period when the funding system began to be adopted, form what is called the national debt. Without entering minutely into the various political circumstances, which have occasioned the growth of this incumbrance, it will be sufficient to exhibit in the following tables its amount at different periods.

Progress of the national debt from its commencement to March, 1801.

	Principal.	Interest.
National debt at the revolution -	664,263	39,855
Increase during the reign of king William - - - - -	15,730,439	1,271,087
Debt at the accession of queen Anne - - - - -	16,394,702	1,310,942
Increase during the reign of queen Anne - - - - -	37,750,661	2,040,416
Debt at the accession of George I. -	54,145,363	3,351,358
Decrease during the reign of George I. - - - - -	2,053,128	1,133,807*

* The apparent disproportion between the capital saved and the interest as annexed to it, arises from the reduction in the rate of interest from 6 to 5 per cent., which took place in the reign of George I. "It appears," Sir John Sinclair observes, "that the capital of the national debt, in 1714, and in 1727, was nearly the same; particularly, if no addition is made to the principal, in the former period, on the supposition, that the temporary annuities ought to be valued at the price they would fetch in the market, and not at the sum that was originally paid. The reader, at the same time, will perceive how much the two periods differ in regard to the interest. In the reign of queen Anne, for the same capital of about fifty-two millions, was paid annually the sum of 3,351,358*l*, which, at the death of George I., was reduced to 2,212,551*l*. The difference amounting to 1,133,807*l*, is a full proof of the flourishing credit which this country enjoyed, and of what might have been done at that time, for retrieving our finances, by an able, decided, and public-spirited minister."

Debt

REVENUE.

95

	Principal.	Interest.
Debt at the accession of George II.	52,092,235	2,217,551
Decrease during the peace - -	5,137,612	253,526
Debt at the commencement of the Spanish war, 1739 - - - -	46,954,623	1,964,025
Increase during the war - - -	31,338,689	1,096,979
Debt at the end of the Spanish war, 1748 - - - - -	78,293,312	3,061,004
Decrease during the peace - -	3,721,472	664,287
Debt at the commencement of the war, 1755 - - - - -	74,571,840	2,396,717
Increase during the war - - -	72,111,004	2,444,104
Debt at the conclusion of the peace, 1762 - - - - -	146,682,844	4,840,821
Decrease during the peace - - -	10,739,793	364,000
Debt at the commencement of the American war - - - - -	135,943,051	4,476,821
Increase during the war - - -	121,269,992	5,192,614
Debt at the conclusion of the American war - - - - -	257,213,043	9,669,435
Decrease during the peace - -	4,751,261	143,569
Debt at the commencement of the French revolutionary war - -	252,461,782	9,527,866
Increase during the war - - -	327,469,665	12,252,152
Total amount of the debt, An. 1801 - - - - -	579,931,447	21,778,018
Deduct paid by the sinking fund, and redeemed by the land-tax -	68,365,458	1,696,996
	511,565,989	20,081,022
Deduct the capital of the temporary annuities - - - - -	9,379,807	
Amount of the national debt funded and unfunded in March, 1801, with the interest and charges thereon - - - - -	502,186,182	20,082,022
		State

State of the national debt of Great Britain, deducting the diminution by stock transferred to the commissioners for the reduction of debt, and on account of land-tax redeemed.

	£.	s.	d.
Total created - - - - -	582,131,385	1	3 $\frac{1}{2}$
Redeemed by the commissioners for the reduction of the public debt, up to the 1st of February, 1805 - -	89,003,759	00	00
<hr/>			
The public funded debt of Great Britain, as the same stood on the first day of February, 1805, as laid before the House of Commons, was - -	493,127,726	1	3 $\frac{1}{2}$
<hr/>			
Total of the annual interest and expence of management, including the million for the redemption of the national debt, and other sums appropriated for that purpose, is -- - -	24,928,336	16	7 $\frac{1}{2}$
Payable annually to the commissioners for reduction of debt - - -	6,834,114	10	7
	18,094,222	6	0 $\frac{1}{2}$
Management reared on stock purchased by the commissioners, and on expired annuities - - - - -	39,067	14	8 $\frac{1}{2}$
<hr/>			
Total interest, charge of management, and for the debt unredeemed on the first of February, 1805 - - -	18,055,154	11	4 $\frac{1}{4}$
<hr/>			
The unfunded debt, and demands outstanding on the 5th of January, 1805, was - - - - -	34,460,521	19	0 $\frac{3}{4}$
<hr/>			
The public debt of Ireland funded in Great Britain, as the same stood on the 5th of January, 1805, was - -	31,562,901	00	00
<hr/>			

Interest, annuities, and charges of management 976,303*l.* 10*s.* 1*d.*

The total amount of the public funded debt created in Great Britain, for account of the emperor of Germany,

REVENUE.

97

as the same stood 1st February, 1805,
was - - - - -

£.	s.	d.
7,502,633	6	8

Redeemed by the commissioners for
reduction of debt 550,228*l.* 00*s.* 00*d.*

Annual interest on unredeemed
debt - - - - -

208,572	3	3
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Annuities for a term of years - -

230,000	0	0
---------	---	---

Charges of management - - -

5716	1	8
------	---	---

Interest on stock bought - - -

16,506	16	9
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Annuity at 1 per cent. 36,693*l.* re-
deemable, with the 1 per cent. or at
par.

Total of annual expence - - -

460,795	1	8
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STOCKS. This large debt is chiefly vested in various stocks or funds, in which the public may purchase and possess shares of the capital, but some portion is borrowed from large trading or monied companies who are benefitted by receiving the interest. These sums are; to the bank 11,686,800*l.*, which, at three per cent., gives for interest 350,604*l.*, and South Sea stock to the amount of 3,662,784*l.*, bearing the like interest. These are to be reckoned among the permanent funded debts, and the others which rank under that description, are the annuities payable at the bank, and bearing interest respectively at the rate of 3*l.* 4, or 5 per cent.

CONSOLS. Of the 3 per cents., the fund called consolidated annuities, or for shortness *Consols*, is the most considerable. When first consolidated in 1751, it amounted only to 9,137,821*l.*, but it now considerably exceeds three hundred millions, having been swelled to that magnitude, partly by real loans, for which value was received; and partly by adding an artificial capital, for which no purchase money was given. Perhaps such a system could not have been intirely avoided, though it materially tends to render our public debts more confused, unmanageable, expensive, and alarming, than otherwise would have been the case.

REDUCED. The three per cent. reduced annuities are of much inferior amount, not exceeding one third of the consols. As the interest on both is the same, the funds might have been united, but that the dividends become due at different periods; the consols being paid half yearly, on the 5th of January, and the 5th of July; the reduced on the 5th of April, and the

10th of October. This division renders it less necessary to collect such large sums of money at once into the bank, or the exchequer, as might otherwise be required. Had these funds indeed been payable at the same time, it might have proved on some occasions inconvenient to the general circulation of the country.

OTHER THREE PER CENTS. Another 3 per cent. fund, under the management of the bank, is known by the name of the 3 per cents. 1726, at which time they were first created. The loan was made in that year in order to discharge certain civil list debts contracted in the reign of George I.

FOUR PER CENTS. The four per cent. bank annuities have been created since the year 1776; and no bargain was entered into with the public creditors, which prevents either the repayment of the principal, or a reduction of interest, whenever the nation is enabled to carry into effect either of these measures.

FIVE PER CENTS. The funds bearing 5 per cent. interest, are at present of two descriptions: the first, called the 5 per cent. navy annuities, and the second, the 5 per cent. annuities of 1797, commonly known under the name of the loyalty loan. The navy 5 per cent. annuities amount to 28,125,582*l.* bearing an interest of 1,406,279*l.*, and requiring 12,656*l.* for the expence of management. By the original contract with the public creditors, to whom this fund belonged, it was made redeemable whenever 25,000,000*l.* of three or four per cent. stock had been purchased by the commissioners for paying off the national debt; and that event having long ago taken place, nothing but the want of means can prevent the reduction of this fund to a lower rate of interest.

LOYALTY LOAN. The origin of the loan so called was this: at the conclusion of the year 1796, the minister, apprehending great difficulty, and some injury to the national credit, if he persevered in raising supplies in the usual manner, communicated to the directors of the bank a project for obtaining from those who possessed certain incomes a large sum, payable in money or five per cent. stock at a liberal price, and with benefits to be augmented in proportion to the forbearance of the lenders. This plan, in its first outline, contained a hint of compelling individuals to advance their money; but long before it had been mentioned in parliament, that thought was abandoned, and a proposition was made for the voluntary subscription of 18,000,000*l.*; a measure so congenial to the general wish of the country, that in five days the books opened for that purpose were filled, and the required sum might have been doubled. Unfortunately, it is impossible to speculate with correctness on

the operations of public spirit; the minister limited his demand, not by his occasions, but by his supposed probabilities of success, and he was therefore obliged, in addition to this first loan, to raise another of fourteen millions and a half, which, at the rate then prevailing in the money market, afforded the proprietors a large profit, and consequently reduced those who could not make good their subscriptions to the first loan as fast as they became due, to the necessity of parting with their scrip at a great disadvantage. To protect them against this unmerited inconvenience, the minister proposed in the House of Commons to make a provision in their favour, which would place them in as good a situation as the subscribers to the other loan; but to this proposition many objections of form, and some of principle were made, and a question on the subject having been lost by a majority of one vote, the minister abandoned his plan of compensation altogether. The loyalty loan originally amounted to 20,124,843*l.* 15*s.* of capital, there was afterward added, by 42 Geo. III. c. 8. a capital of 2,227,612*l.* 10*s.* so that the total now amounts to 22,352,456*l.* 5*s.* As the creditors will soon be entitled to demand their money, it is very improbable that this fund will long be entitled to remain in its present state.

SOUTH SEA STOCK. The annuities payable by the public, under the management of the South Sea company, bear uniformly the same interest, namely, three per cent. They are divided however into three branches: 1st. The old South Sea annuities, amounting to 11,907,470*l.* 2*s.* 7*d.* bearing an interest of 357,224*l.* 2*s.* payable half-yearly, on the 5th of April, and 10th of October; 2d. The new South Sea annuities, amounting to 8,494,830*l.* 2*s.* 10*d.*, and the interest thereon being 254,844*l.* 18*s.* 1*d.*, is payable on the 5th of January, and 5th of July; and 3d. The sum of 1,919,600*l.* funded in the year 1751, the interest on which, amounting to 57,588*l.* is payable at the same time.

DEFERRED STOCK. The capital of the deferred three per cent. annuities, amounts to 1,740,625*l.* the interest payable on which does not commence till the 5th of January, 1808, when they are to be made a part of the three per cent. consolidated annuities. The allowance for management amounts to 783*l.* per annum. The idea of postponing the payment of the interest on public loans was borrowed from America, but the system is not likely to be much relished by the monied interest on this side of the Atlantic.

IMPERIAL AND IRISH LOANS. To these permanent burthens should be added, the Austrian or Imperial loans, and the Irish loans, since the year 1797, both being guaranteed by the British government. In the years 1795, and 1796, the emperor of

Germany, for the purpose of carrying on hostilities against the common enemy, was obliged to raise in London, by permission of parliament, two loans, amounting to 7,502,633*l.* the annual interest of which is 497,735*l.* The Irish loans are raised and the dividends paid in London, a measure which became necessary, in consequence of the heavy expences occasioned by the late rebellion; but the money for discharge of the interest is regularly raised and remitted from that country.

TEMPORARY ANNUITIES. The temporary annuities are, 1*st.* Those granted for life. 2*dy.* For a definite term of years. They are payable either at the bank or the exchequer. In the years 1778, and 1779, certain annuities were granted for short periods, ending on the 5*th* of January, 1808: they amount in all to 418,333*l.* per annum. However agreeable the prospect may be, of getting soon free from such an incumbrance, there is reason to believe, that less value is paid for such annuities, than for those of a more permanent nature, 25,000*l.* per annum of short annuities, which expired on the 5*th* of April, 1787, instead of being extinguished, are placed to the account of the commissioners appointed for the reduction of the national debt. The most important branch of the temporary annuities, amounting to 1,063,702*l.* per annum, unfortunately continues till the 5*th* of January, 1860. The only sums payable at the exchequer are certain annuities, granted in the reigns of king William and queen Anne, which end at different periods, prior to or at Lady-day, 1808, also some life annuities payable at the same place; and certain tontine annuities, the whole of which amount only to 127,750*l.* per annum, and require 5,490*l.* per annum, for the expence of management.

SALE AND TRANSFER OF STOCK. All these funds and stocks are transferred at the bank of England, where the dividends or interest are paid as they become due; books for recording and authenticating the sales and purchases made by individuals, with proper forms of receipts and other requisites, are kept at each office; a clerk in which also makes out, at a very small expence, powers of attorney for those who with their bankers, agents, or friends to receive their dividends, or, if necessary, to transfer their stock. Adjoining the transfer offices are large rooms, where the buyers and sellers meet and prepare their documents.

BROKERS. Any person may transact his own business in the buying or selling of stock, if he thinks fit, but the more usual mode is, to employ a broker; and although many objections have been made to the intervention of these persons, they will hardly be considered as effectual, when it is recollected that those who have little business to do in the funds, must be pre-
vented

vented by diffidence and awkwardness from accomplishing it to their own satisfaction, but may employ a broker at the moderate price of two shillings and six pence per cent.; and those who have daily transactions in the funds to a large amount, and to whom experience must be supposed to give confidence, are known to prefer the ease and security, though attended with the expence already mentioned, which are derived from employing brokers. These persons are within the jurisdiction of the lord mayor and court of aldermen; it being a law of the city, that any person may act as a broker, on giving a bond for his good behaviour, which is executed by himself alone, and in the penalty of 500*l.* and another for payment of forty shillings per annum into the comptroller's office, which is executed by the individual and two house-keepers, in the penalty of 150*l.*

STOCK EXCHANGE. Although the final conclusion of business relating to the funds must, and its preliminaries may, be performed in the bank, the much greater portion is transacted in a place called the Stock Exchange. This was, in old times, at a coffee-house in Change Alley, called Jonathan's; it was then removed to a subscription room, near the Royal Exchange, where it continued till May, 1801, when the brokers, by a private subscription, purchased a large building in Capel Court near the bank, which they pulled down, and erected a new edifice for the transaction of their daily affairs, securing it by prudent regulations from many of the irregularities which disgraced their former abode. Still, however, by accustomed phrase, the place where this business is negotiated, is called *the Alley*, and a man who has bought or sold stock on speculation, is said to have been *in the Alley*.

JOBING. The ordinary transactions in stock, where persons sell that which they actually possess, or buy with money paid at the moment, is like every other dealing in an open market, where no gross advantage can be taken, but where the vigilant and cautious will have some superiority over the negligent and unwary; and this benefit is rendered less, by the publicity of all transactions, and the daily publication of a printed list of prices. But for many years the sale and transfer of real stock has formed an inconsiderable part of the business transacted in the Alley, where bargains for time, or speculations on the judgment of individuals, respecting the rise or fall of the funds, have formed a vast and intricate maze of gambling. In proportion as money is scarce or abundant, public confidence elevated or depressed, the price of the funds is increased or lowered: in peace it is far from stationary, but in war, it is

subject to continual fluctuation, dependent on every demand of government for money, every article of intelligence received or expected. This uncertainty presenting to some the opportunity of gaining advantage, by the imprudences into which hope or fear immoderately entertained will lead others, has generated a traffic carried on daily to an incredible extent, called *Stock Jobbing*. It were useless to describe the rise and progress of this species of gambling, or to recite the many reflections which the ruin of numerous individuals and families has occasioned: the legislature has done its part towards suppressing it, by a statute 7 Geo. II. c. 8. intitled, "An act to prevent the infamous practice of stock jobbing;" but when personal interest and an opinion of superior penetration combine to favour any species of adventure, and when the most opulent and respectable members of the community are known to embark in it with avidity, the restraints of law are interposed in vain; no disgrace attends those who are known to be in the daily habit of infringing this statute; but a man who avails himself of its provisos to cancel a debt which he has incurred in the alley, is generally detested and despised. Some terms are used in describing the different classes of adventurers in the alley, which it may be proper here to explain. He who buys any portion of government securities in the way of speculation, and without any intention to pay for it, but only to pay or receive the difference of price, at a certain fixed time called the *settling day*; or he who holds a larger portion of scrip than he can retain, is called a *Bull*. He who, on the contrary, has agreed to sell a large portion of stock which he does not possess, at a certain day and price, is called a *Bear*. Both these persons deal for many thousand pounds in stock, beyond any capital they are supposed to possess, because the terms of their bargains always are such that the difference between the market price on the settling day, and the price at which they have agreed to buy or sell, being paid, the other party to the contract has all the benefit he can expect. A bull is always anxious to hear and propagate such news as will keep up the spirits of the nation, and cause the funds to produce a high price: while the bear derives his best hope from public disaster, and would be completely enriched by events which should occasion national despondency. Those who through dishonesty will not, or through poverty cannot, make good the engagements they have formed in the alley, are stigmatized by the name of *Lame Ducks*, and, by a recent regulation, their names are exhibited on a black board as a perpetual caution to others to avoid all transactions with them.

TAXES.

TAXES. The taxes by which money is raised to pay the interest of the national debt already mentioned, and to supply the exigencies of the state, are divided into two general classes; temporary and permanent.

TEMPORARY. The temporary taxes are those on land and malt: the former indeed, since the act for its redemption, may with greater propriety be considered as permanent; but as it still is, in respect to public offices, and pensions, temporary, it is continued in its old situation.

LAND TAX. The land tax originated in those monthly assessments, which were imposed in the time of the commonwealth, and were occasionally levied in the reign of Charles II.; it has been assessed without intermission, since the reign of William III. It was at first intended as a rate on every species of income or property, and in that sense was originally, and still continues to be laid, on the profits of public offices and on pensions. The assessment was framed in the year 1692, when a new valuation of estates was made throughout the kingdom: which, though by no means a perfect one, had this effect, that a supply of rather less than 500,000*l.* was equal to one shilling in the pound, of the value of the estates given in. This tax, though annually voted, was never afterward entirely remitted; it was sometimes moderated to three shillings; sometimes to two; and in 1732 and 1733, to one shilling in the pound; but by the statute 38 Geo. III. it was, for the sake of being redeemed, rendered perpetual, and still adhering to the valuation formerly made, estimated at 2,037,627*l.* 9*s.*, of which 47,954*l.* 1*s.* 2*d.* is the portion raised in Scotland.

COMMISSIONERS. The method of levying this tax, is by charging a particular sum on each county, according to the valuation made in 1692: and this sum is assessed and raised on individuals (their personal estates, as well as real, being liable) by commissioners, who are annually renewed, and who cannot execute the office in any county, except those in Wales, under a penalty of 50*l.*, unless they have some estate or interest in land within the county, of the clear yearly value of 100*l.*, and which was taxed for that sum at least a year before. This restraint does not extend to commissioners being inhabitants of cities, boroughs, towns corporate, or cinque-ports, or the Inns of Court or Chancery. The commissioners are obliged to hold their meetings at the accustomed place in each county, where they subdivide themselves, appointing three for each division, and nominating clerks, assessors, collectors and other subordinate officers; they also sign the assessment and warrant to collect it; parties considering themselves aggrieved may

appeal, but to the commissioners alone, and their decision is final. From this rule there is one exception, as it relates to the voting for knights of the shire. In order to exercise this franchise, it is necessary that the party shall be assessed to the land tax in his own name, or that of his tenant. If the assessor has neglected to assess him, he may prefer his claim to the commissioners, and if dissatisfied with their decision, he may, on giving ten days notice, appeal to the justices at the next sessions.

OFFICERS. *A Receiver General* for each county is appointed by the king, and due notice given to the commissioners; and he, giving the like notice, may appoint a deputy: he is paid from the treasury, a salary not exceeding two-pence in the pound on the monies collected.

Assessors are appointed by precept, under the hands of two or more commissioners, at their first meeting, directed to such inhabitants, constables, or other officers as they think fit; and at their second meeting, they deliver to each assessor a printed form of assessment, together with a charge, how and in what manner they ought to proceed in the execution of their duty; and the persons nominated in the precepts to be assessors, not appearing when summoned, or refusing to act, forfeit to the king, a sum not exceeding 5*l.*, nor less than forty shillings.

Collectors are appointed by warrants, under the hands of the commissioners; they have power to demand the sums assessed, of the parties on the premises, or at their last place of abode; they may levy a distress on refusal to pay, without any further warrant than that of their appointment, and may break open doors, in the day time, and chests wherein any goods or effects are secreted. The collector pays the money as it comes to his hands, to the receiver general, deducting from his last payment, three-pence in the pound as a compensation for his trouble. For the faithful performance of their duty, the commissioners may oblige the collectors to give security to the full amount of the rate, in their respective districts; and they, and all other officers, neglecting their duty, are liable to a fine of forty pounds, to be imposed by the commissioners, and not remitted, but by the majority of those who inflicted it.

Clerks are also appointed by the commissioners in every division, who receive a compensation not exceeding three-halfpence in the pound.

DEDUCTIONS. The expence of all these officers for England, is 53,574*l.*; the portion of Scotland is paid into the Exchequer free of all charges. There is also a deduction of about 1200*l.* from the receivers in Wales, who complain of great difficulty in remitting the money to London. Before the
land

land tax is paid into the Exchequer, a further defalcation is made for the expence of the militia, the apprehending of deserters from the army, and the bounties granted by statute 21 Geo. III. c. 58, for encouraging the growth of hemp and flax; these together are calculated at 130,000/.

REDEMPTION OF THE LAND TAX. It has already been said that the act for redeeming this assessment, occasioned its being changed from a temporary to a permanent imposition. The plan was first recommended to government, as it is said, in an anonymous pamphlet; and at a period of the French revolutionary war, when the stocks were exceedingly depressed, the minister brought forward a plan for enabling persons by paying certain sums of money, to be laid out in stock, for the benefit of the public, to discharge their estates from all assessments then imposed. As the necessity of laying an annual land tax was considered one of the great securities for frequent meetings of parliament, the new duties on malt, sugar, tobacco and snuff, which before were perpetual, and which greatly exceeded the amount of the land tax, were rendered temporary. The minister hoped to relieve the nation from the burthen of stock to the amount of 66,666,666/., but in five years after the passing of his first act, which was very voluminous, and explained or amended by eight additional acts, no more than 19,180,587/., had been redeemed, and some are of opinion that there is no prospect of any great addition.

MALT TAX. The revolution had taken place some time, and the public had experienced the greatest difficulties in raising the supplies, before parliament could be prevailed on to impose a duty on malt, together with a proportionable rate on cyder, perry, and other liquors, the use of which might diminish the consumption of that article. It was first granted in 1697, and it was always supposed would be only a temporary impost. By the treaty of union with Scotland, it was agreed, that during the continuance of the duty on malt, which then existed in England, (but which expired on the 4th June 1707,) Scotland should not be charged with it. Indeed that country was not included in the malt act, until the year 1713, and even then it was thought advisable for government to assume a sort of dispensing power, and to give directions that it should not be levied. Nay, the Scots were so impressed with an idea, that they were in a manner for ever exempted from such a duty, by the treaty of union, that in 1725, when the tax was first enforced in that country, it occasioned considerable riots which were with difficulty suppressed.

The income of this tax for England alone, exclusively of Scotland, at the rate of sixpence per bushel, was originally calculated

at

at 750,000*l.* a year, a sum which was far from being exaggerated; for on the average of eight years, ending Midsummer 1722, it produced at the rate of 755,000*l.* per annum. It fell off, however, during the American war; and its amount during the year, ending 5th January, 1803, deducting the expences of management and collection, was only 702,893*l.*

PERPETUAL TAXES. For some years after the revolution, duties were only granted till the money borrowed on the faith of them should be paid off; but about the year 1710, they began to be imposed in perpetuity; to defray the interest of debts and the surplus to be at the disposal of parliament. These permanent taxes are divided into customs, excise, stamps, and miscellaneous.

CUSTOMS. The customs are the duties, toll, tribute, or tariff, payable on merchandizes, exported and imported. The original grounds of this imposition were; the licence which the king gave the subject to depart the realm, and carry his goods with him; and the obligation which, of common right, rested on the king, to maintain and keep up the ports and havens, and protect the merchants from pirates; to these is added a third cause, the permission given to foreign merchants to trade in the king's dominions. The customs on imported goods are very extensive, including a vast variety of articles, from the most precious to the most minute which can be an object of commerce. To these there can be no reasonable objection in general; the modification most to be desired is that which should exempt, or but slightly affect raw materials, while certain manufactured articles, and the luxuries drawn from the states or colonies of foreigners, should, unless protected by a commercial treaty affording reciprocal advantages, be assessed so highly as to become almost prohibited. The duties on exports must be regulated by the wants, or the liberality of foreign purchasers, and the probability of rivals in their markets. If the goods to be exported, will, after all expences paid, produce to the seller a certain advance, there is no reason why the government should not share, and largely too, in the profit which arises from the industry and enterprise of its own subjects. If materials are exported raw, the duties are still higher, and justly too, since from them the subjects of a foreign state are to derive support and an exercise for their industry. On this account raw articles, as lead, tin, and alum, or such as are incapable of being manufactured, as coals, are loaded with heavy duties, and the exportation of wool is prohibited altogether. But, as in certain manufactured articles, the probability of rivalry, or the impossibility of obtaining more than a stated price, would render the sale difficult in foreign countries, if the duties imposed on home consumption were

were continued, a rebate or deduction of duty is made, under the name of a drawback. Besides the duties on imports and exports, there are some on goods carried coast-ways, the policy of which is questionable; and a new, important, and judicious duty on ships arriving in British ports, called tonnage.

THE BONDING SYSTEM. A great objection to the system of customs in general was, the necessity it imposed on merchants of paying in advance large sums of money for duties, obliging them to confine their trade, or borrow, at a disadvantage, monies which they frequently could not obtain again from the consumer. These inconveniences, and the remedy for them were in the contemplation of Sir Robert Walpole, who had projected a plan for receiving the goods of merchants into warehouses, under the joint custody of the proprietor and of government, and not demanding the payment of duty till a sale was effected. This simple and rational plan was at that day prevented from taking effect by the prevalence of party, but in a more happy period it was re-introduced to the notice of parliament by Mr. Pitt, and carried into practice by his successor, Mr. Addington. If the plan is capable of extension, no means for attaining that end ought to be omitted; since it contains within itself every possible recommendation; it is equally beneficial to the state, to the merchant, and the consumer, and obviates at once the inconveniences and frauds attending the allowance of drawbacks. By the act which establishes this system, (43 Geo. III. c. 132.) goods may be landed and warehoused as follows: at the Isle of Dogs, in warehouses belonging to the West India Dock Company, without payment of customs, and on bond to the excise for the duties payable to that part of the revenue, certain specified articles, containing in gross, the whole produce of the West India Colonies; at the London Docks, the following articles, not being the produce either of the East or West Indies: rice, tobacco, wine, brandy, geneva, and other spirits; at places to be approved by the commissioners of the customs, and on bond with one sufficient surety, a great number of other articles, including most of the materials for ship-building, cork, brimstone, kelp, mahogany, skins, tallow, and oil; and in warehouses to be approved by the lords of the treasury, a long list of articles, too numerous to specify. The lords of the treasury, or the privy council, may also at any time add to the articles by publication in the London Gazette, and the like privileges may be extended to other ports in Great Britain, which from the nature and extent of the trade there carried on, the convenience of the situation, and the security of the revenue by the construction of docks and warehouses, properly adapted for the reception and safe custody of goods, may be entitled

titled to it. This act, it is justly observed, grants facility to the British merchants, and will convince those of foreign countries, that they may send their property to this island, either for security or a market, without restraint, or incurring other than ordinary charges; on the whole, it is similar to, or on the footing of, a free port, but superior to some, since there is no *ad valorem* duty paid.

CONSOLIDATION OF DUTIES. Another great improvement in the customs ought not to be unnoticed, it is the consolidation, or simplification of the duties, effected by Mr. Pitt in 1787. It would at first sight appear almost incredible, to what an extent the numerous rates imposed on different articles had proceeded, how complicated, how embarrassed with fractions, and subject to disputes almost every part of this revenue was become, from the accumulation of duties laid at different periods, and in various proportions. The subject had not escaped the attention of Lord North, but the weighty cares of his administration, and the perpetual opposition with which he was harassed, prevented him from paying the attention it required. Mr. Pitt brought forward, in time of peace, a series of regulations for removing this evil, which were included in three thousand separate resolutions; but so well and so effectually arranged, as to gain for the minister the cordial support, and warm eulogy of the most vehement opponents of his other measures. The system thus ably and auspiciously begun was brought to perfection by a general act, 43 Geo. III. c. 68.

CUSTOM HOUSE. Until the reign of Queen Elizabeth, great frauds were practised in this department of the revenue by the introduction and export of goods from small and obscure creeks or places where no custom house officer was attending, or by the corruption of those officers, or by other fraudulent and undue practices. In the first year of this illustrious princess, an act passed prohibiting the landing of any goods, except at such places as she by commission should appoint. In pursuance of this statute the lord treasurer, under treasurer, and chancellor of the exchequer, published her pleasure with respect to divers ports of the kingdom, and for London they drew up a declaration, determining what particular quays, wharfs, and stairs should be allowed for landing and discharging all manner of merchandizes, and made other regulations for securing the payment of duties. In the neighbourhood of these wharfs, on the south side and not far from the east end of Thames-street, a custom house had been erected as early as the year 1385, by John Churchman, sheriff of London; but its benefits were superseded by the irregular manner in which those duties had hitherto been paid. The advantage of the plan adopted by
Elizabeth,

Elizabeth, was speedily manifested in the augmentation of revenue, which in her reign advanced from 14,000*l.* to 50,000*l.* a year. She caused a new custom house to be built on the former spot, which being consumed by the fire in 1666, and that erected in its stead being destroyed by the same calamity in 1718, a new one was founded, which still subsists. Of the building it is unnecessary to speak, convenience is its sole recommendation; it is well situated for business, as before it, ships of three hundred and fifty tons can lie and discharge their freights. The business of the customs is principally transacted in the apartment called the *Long Room*, where numerous persons are employed in receiving the proper payments and securities, administering the oaths required by the revenue laws, and making out the various papers and certificates requisite for the safety both of the public rights, and the property of individuals.

It will not be possible in this work to enumerate the various kinds of goods subjected to the customs, but a general outline of the manner in which the business is transacted, may be considered as possessing some utility and interest.

ENTERING GOODS ON IMPORTATION. When foreign goods are imported, the master of the vessel, on his arrival, must go to the custom house and report his cargo on oath. The merchant may enter and land his goods at any time within twenty days from the date of the master's report: to do which in the most advantageous manner, he must write and sign five bills of entry, one must be in words at length, and is called the *warrant*, the other four may be in figures. These five bills the merchant delivers to the collector, or his clerk, who ascertains the duties, which must be discharged, or a bond entered into for the payment on delivery from the public warehouses, before the goods can be landed. These requisites being complied with, the warrant is duly perfected, signed, and delivered to the land waiters appointed to attend the delivery, together with blue books, wherein an account of the delivery is to be entered. The goods are then landed, examined, and the quantities taken. If the merchant is found to have entered less than the quantity consigned to him, he must pass *post entries*, and pay the duties for the goods short entered, in the same manner as was observed in passing the *prime entries*; but if, on delivery, an over entry appears, he may apply to the collector to have his entries altered, and the overplus duly repaid; which may be done, if he applies, before the collector and comptroller have posted the entry in the king's books, upon his making satisfactory proof that no fraud was committed: but, if the entry be posted before he applies, then the duty must

must be repaid by certificate of over entry. It sometimes happens, that goods are sent by merchants to sell by commission, and arrive before the invoice. In this, and similar cases, when the merchant cannot make any tolerable conjecture at the quantities, and perhaps knows not the species, or proper denomination of the goods, the law permits them to be landed by *bills of light or view*. The merchant makes a deposit in the hands of the collector, of as much money as the duties are imagined to amount to, or rather more, then the bill of light is made out, and given to the proper officers; who must examine and take the quantity of the goods, and make their report to the collector the next day, or render themselves liable to the penalty of one hundred pounds in case of failure. According to the report the entries are passed, and the duties paid, in the same manner as they would have been, had there been no occasion for a bill of light. If the officers cannot go through the examination in one day, they must report their day's work to the collector, as being in part of the light; for which the merchant must pass entries, and pay duty, and so proceed till the whole bill of light is completed. Goods not rated in the book of rates are often imported, in which case, the duties are to be charged according to the value of the goods upon oath, by which value is to be understood the value at the port of importation at that time, exclusive of the duty. The merchant is to observe, that if he undervalues his goods, the law empowers the officers to take and sell them; and, after repaying him the duties, according to the value he set upon them, together with the said value, and also ten per cent. thereon, the surplus, if any, is to be confiscated to government.

The process on board the ship, and on the quays, is as follows: the tidemen on board the ship, keep a tally account of the delivery in blue books; the land waiters on the quays, under the inspection of the land surveyors, enter in their blue books not only the number and quality, but also the quantity of the goods delivered. The design of the delivery is to ascertain the quality and quantity of the goods, which is chiefly incumbent on the land waiters; who are to take care that the goods delivered agree in these particulars with the entry. The qualities of goods are always known to the merchants; the officers in determining them, must rely on experience, and the descriptions in the books of rates. The quantities are to be determined either by number, weight, or measure, according as the goods are rated in the book of rates. To enable either merchants or officers to do this, they should be well skilled in arithmetic, gauging, and mensuration. If it appears, on delivery, that
goods

goods have received damage, the surveyor and land waiters make their report on the back of the warrant, and return it to the collector and principal officers; who chuse two indifferent and experienced merchants to view the goods, and upon oath to determine the quantum of the damage. Then the surveyor and land waiters, certifying that the goods viewed by the merchants are the same for which duty was paid; a certificate of the whole proceeding is made out, and a proportional restitution of duty is made to the merchant. If, on delivery of foreign goods, it appears that the merchant, through inadvertency or mistake, has entered and paid duty for a greater quantity than is really imported and delivered, the surveyor and land waiters must certify the case on the warrant, and return it to the collector and principal officers; who thereupon call on the merchant, or his known agent, to state on oath the quantity received, and also the reason of the over entry; and the truth being confirmed by the certificate of the delivering officers, the duty for the quantity over entered is repaid. If the goods imported are entitled to a premium after entry and delivery, the officers will examine whether they are cleansed and garbled from all dirt, dross, &c., and in good merchantable condition, and have all the other qualifications required by law. Then the true quantities, qualities, circumstances of importation, &c. are certified at large, by the proper officers, and the certificate delivered to the importer, who, producing it to the commissioners, or proper officers, receives the premium. Portage is an allowance, or premium to masters of ships, for making a true report of their cargoes. To obtain it, as soon as the cargo is delivered, and the duties all paid, the master must apply to the land surveyor, who will give him a certificate, that he has made a true report, and is fully intitled to portage; wherein will be also expressed the amount of the branches of duty for the whole cargo, out of which portage is payable. This certificate the master carries to the collector and comptroller, who examine it, and compute the amount of the portage: then a portage bill is made out and signed, and the money is paid according to established rates.

DRAWBACKS. If foreign goods and merchandizes be exported within three years from the importation, reckoning from the time of the master's report, the greatest part of the duties first paid are drawn back. The manner of proceeding at the custom house in this case is, that a certificate must be obtained of the payment of the duties inwards, from the collector and comptroller; and proof is to be made, that the goods to be exported are those mentioned in the certificate, by the oaths of the exporter, and the merchants through whose hands they have

have passed. The exporter then enters the goods outwards, as in the common way of exportation. The cocket granted upon this occasion is called a certificate cocket, and differs a little in form from common over sea cockets. Notice of the time of shipping is to be given to the searcher, who attends the shipping, examines and ascertains the quantity, and returns the cocket endorsed, to the officers who granted it: all other proceedings at clearing the vessel are the same as in ordinary cases. Some time after the departure of the vessel, the merchant exporter may apply to the collector and comptroller for the drawback, who will thereupon make out a debenture, on a proper stamp, containing a distinct and clear narrative of the whole proceeding, with the merchant's oath, that the goods are really and truly exported to parts beyond the seas, and not re-landed, nor intended to be re-landed, or brought on shore again; and also the searcher's certificate of the quality and quantity of the goods, and the time of shipping underwritten. The debenture being thus duly made out, and sworn to, the branches of duty to be repaid are indorsed, the merchant's receipt taken below, and the money due paid. Much of this business is rendered unnecessary, as already has been stated, by the bonding system.

EXPORTATION. When it is intended to export goods, four bills of entry are written and delivered at the custom house to the collector or his clerk, by whom the duties are calculated and received. On payment, a cocket, certifying the payment of the duty or regular entry of the goods, is made out, which, before they are shipped, the exporter delivers to the searcher, with notice of the time when they are to be embarked. The searcher will attend and examine, and count, weigh, or measure the goods; which done, they are put on board, and the searcher certifies the quantity shipped on the back of the cocket, which is then returned to the principal officers, with whom it remains till the master comes to clear. When the master comes, the cockets for all the goods on board are collected, and entered in what is called a report outwards, on the master's declaring the said cockets to contain a true account of his whole cargo. To this report the master makes oath before the collector and comptroller, pays his clearing charge, his cockets are delivered, and he is at liberty to proceed on his voyage. When goods entitled to bounty are exported, the merchant (after entering them, and taking out a cocket as before directed) is to give bond for the exportation; and the officers ought to be more than ordinarily careful, and exact in taking the quantities, and examining whether the goods have all the legal requisites to entitle them to bounty. When the ship is sailed and clear of the coast, the exporter may apply to the collector and comptroller

for the debenture; which being duly signed, the bounty will be paid him immediately at the port, if there is money on the proper branches, but if not, the debenture will be delivered to him, and he must apply for payment in London. These are the principal circumstances necessary to be observed on these points; they are subject to some local and occasional variations, as in shipping coals, and sometimes corn, malt, or flour; but these are too minute and practical to be here detailed.

MEDITERRANEAN PASSES. Ships trading to the Mediterranean, must be provided with peculiar passes from the admiralty. The steps necessary to be taken for obtaining them are these: the surveyor of the port where the ship lies must go on board, and examine and survey her, and muster the seamen; then he is obliged to certify under his hand, to the collector of the port, the burden and building of the vessel, the number of men, distinguishing natives and foreigners, the number of guns, what sort of vessel she is, and other particulars. The collector, having received this, prepares an affidavit, to be signed and sworn to by the master, which contains all the foregoing particulars, and likewise the name of the vessel, master, and port bound to, the time when, and place where she was built; to which is added, that she is of British property; that her last pass was delivered up; and that the master has delivered up all the passes he ever had before. This affidavit is transmitted to the secretary of the admiralty, who thereupon sends down a pass, and a bond for delivering it up, after the voyage is performed. The bond, being duly executed, is returned to the admiralty, and the pass is delivered to the master.

Ships are not permitted to trade to the British plantations, or colonies, until proof be made upon oath, by one or more of the owners, that she is British built, and British property, and the master, and at least three fourths of the mariners, British; and that no foreigner, directly or indirectly, has any interest therein. After this the ship is registered, and a certificate delivered to the master. Bond is also given, with one sufficient security, in the penalty of 1000*l.* if the vessel be under 100 tons; or in 2000*l.* if above that burden; that, if any of the goods of the produce of the said plantations, enumerated in several acts of parliament, be taken on board, they shall be brought by the said ship to Great Britain, and there landed. This bond may be given either in Great Britain, or in the plantations, and a certificate of the delivery must be produced in eighteen months from the date of the bond.

OFFENCES. The laws for imposing customs are frequently evaded, both by fraud in the possessors of merchandizes which are the objects of them, and by activity and violence in contraband dealers, commonly called *smugglers*. In fact, the tempo-

tation to commit these frauds is almost irresistible: the high duties tempt many persons to adventure the seizure of their goods, as in a game of chance, against the probability of securing them and evading the payment of a heavy impost. Those who reside near the coasts are frequently supplied with these articles, which are delivered to them in small quantities, and almost without danger; and their success inspires others with an inclination to enjoy the same benefits. But it happens in this, as in every other traffic, that where extensive supplies are required, large capital and an accumulated stock become necessary; numbers being engaged, and the defence of property strongly incited, affrays and murders frequently ensue; and it would become all those who by any encouragement to illicit traffic have gratified their avarice or parsimony, to reflect, when they hear of the blood which in these contests is so frequently shed, whether they can, in conscience, stand intirely acquitted of being accessaries. Against every fraud which the ingenuity of the exporter or importer can devise for evading the revenue laws, provision has been made, by the requisition of oaths, which are perhaps taken too frequently to produce the desired effect; by penalties and forfeitures of great severity, which lay the delinquent at the mercy of any one who can detect him in his illicit practices; and by the appointment of numerous officers in every department, whose industry is guided by experience, and excited by the certainty of sharing in the property confiscated, or the penalties recovered by their means. Against smugglers too, and their abettors, the laws are justly severe, ascending, according to the circumstances of offence and resistance, from forfeiture and penalty, to transportation and death. It is also to be observed that the offences amounting to felony, may be tried at the discretion of the attorney-general in any county in England; and that if any officer or other person employed in the service of the revenue, is beaten, wounded, maimed, or killed, or the goods seized by him are rescued, the inhabitants of the rape, lathe, or hundred, unless the offender is convicted within six months, forfeit one hundred pounds to the executors or administrators of any officer, who is killed, and pay damages to any officer beaten, maimed or wounded, not exceeding forty pounds, and for any goods rescued, not exceeding two hundred pounds. A reward of five hundred pounds is given for apprehending any offender; a person wounded in apprehending him to have fifty pounds extraordinary.

OFFICERS. The duties of this extensive portion of the revenue are performed by a great variety of officers, placed, not only at the custom-house in Thames-Street, but in all the ports

ports in the kingdom, and its dependencies. To describe or even to enumerate them all would require a large treatise, the most considerable are the following :

COMMISSIONERS. To the commissioners, the general controul and management of the business at the custom-house is assigned. They are appointed, as their title imports, by commission under the great seal; are nine in number, and have for salary 1200*l.* a-year each. When a commission is issued, the two first named are sworn before the chancellor, or chief baron of the exchequer, or master of the rolls, for the true and faithful execution, to the best of their knowledge and power, of the trust committed to their charge and inspection, and that they will not take or receive any reward or gratuity, directly or indirectly, other than their salaries, and what shall be allowed them from the crown, or the regular fees established by law, for any service to be done, in the execution of their employment in the customs, on any account whatever. All the other commissioners take the same oath before the first two, and then any two of them can administer those which are required to all the subordinate officers in London: those in the country take the oaths before two justices of the peace; and in all cases a certificate is sent to the next sessions to be inrolled of record. These commissioners form what is termed the Board, to give directions in doubtful cases, carry into effect the orders of the treasury board with respect to the revenue, and to hear appeals and grant relief to individuals according to circumstances. They have a secretary, whose annual salary is 710*l.* with various clerks and other officers.

CASHIERS, PAYMASTERS AND COMPTROLLERS. These form a separate office in the customs, consisting of many persons, whose business is indicated by the name of their employments. The receiver and comptroller general have each a salary of 1000*l.*, and the rest are paid, some by salaries, others by fees.

In all other branches of the business, and on the wharfs, numerous officers are employed.

LAW OFFICERS. There are solicitors for managing the business arising out of various departments of this extensive branch of revenue, who have annual salaries exclusive of their fees.

The remaining officers, of whom some are employed both in the metropolis and the country, and others in the country only, may be comprized under the following heads.

SEARCHERS. It is the duty of searchers to see that no goods are imported or exported without payment of duty; they also keep entries of all cockets, &c. passed to them, and likewise of their own seizures, and account yearly for the truth of their transactions. The searcher of every head port, must have one

able and sufficient deputy or servant at the least, to reside at all members and creeks, appointed by commissions out of the court of exchequer, for passing, shipping, clearing, &c. of ships and merchandizes.

SURVEYORS. The surveyors are a kind of inspectors and supervisors of the whole business of the customs without doors, as well by land as by water; they attend, at shipping and landing of goods, to and from foreign parts, and coastwise, to see that the proper officers regularly discharge their respective duties, and to adjust the tares of goods, &c. and they make, attest, and transmit proper accounts and certificates.

LAND-WAITERS. These persons attend at the landing of imported goods; they assist the searchers in the execution of all cockets for the shipping of goods to be exported: and in all cases where drawbacks or bounties are to be paid on exportation, they certify the shipping thereof on the debentures.

COAST-WAITERS. The coast-waiters, at their respective ports, are to attend at the landing and shipping of all goods coming from, or going to any other port within Great Britain, to take an account thereof, and see that they exactly agree in quality and quantity, with the sufferances granted for the landing or shipping; so that, under the colour of bringing or sending one sort of goods coastwise, others may not be fraudulently imported or exported.

TIDE-SURVEYORS. These persons are at all times, when his majesty's service requires it, to attend by water, to visit all ships from foreign parts, on their arrival into port, in order to put tide-waiters on board, and also in outward-bound ships which have goods on board intitled to a drawback or bounty; to see that they do their duty, and remove them when their presence is no longer necessary.

TIDE-WAITERS OR TIDESMEN. These officers are placed by the tide-surveyors, on board all ships laden with goods from foreign parts, to prevent the fraudulent landing or conveying of them away without payment of duties, which is to be signified to them by a note under the land-waiter's hands: and, when they have received such note, order, or warrant, from the land-waiters, for permitting any goods to be unladen, they are to take an account of the marks, numbers, and outward package, in a book to be given them for that purpose: but they may send all small parcels of goods liable to be carried away to the king's warehouse, for security of the duties, without any order, having first entered them in the said books. And during the time they are on board, they are to prevent wines from being filled up, or the package of any goods opened, and endeavour

to discover all goods concealed, as likewise any bulk tobacco; or other prohibited goods, and to seize the same. They are likewise to be placed on board outward-bound ships, whereon there have been laden any goods intitled to a drawback or bounty on exportation, to prevent the fraudulent relanding; and during the time they continue on board, they are to take care that the packages of any goods be not altered.

BOATMEN OR WATERMEN. In some ports, these persons are appointed only to row and attend the tide surveyor's boats; but in most ports they likewise, when occasion requires, officiate as tide-waiters.

COAL METERS. The duty of coal meters is, to attend at the delivery of all ships coming coastwise with coals, culm, or cinders; to mete, measure, or weigh the same, and take account of the full quantities delivered, in order that the duties may be paid.

RIDING OFFICERS. These persons are appointed to reside at, or near, some particular places on the sea coasts, and have certain districts allotted them, some part whereof they are to visit daily, in order to discover any vessels hovering on the coasts, with a design to land or take on board any prohibited or uncustomed goods, which they must by all means endeavour to prevent; and in case of the fraudulent landing or shipping of any goods, to seize the same, with the vessels, boats, &c. They are to enter each day's transactions and proceedings, with their motions from place to place, in a proper book to be kept for that purpose; whence at the end of each month, two journals are to be transcribed, and sent or delivered to the collector; one whereof to be preserved in the office, and the other to be transmitted to the commissioners, in order to be examined by the person appointed for that purpose. But, before these journals are thus transmitted, the collector is, on the back thereof, to make his observations how far the officers have performed their duty.

MASTERS OF REVENUE CUTTERS. These are commanders of vessels appointed to cruize on the coasts of Great Britain, and are diligently to attend on board, and to keep their vessels in constant motion within their respective districts or stations, unless in cases of necessity or pursuit of suspected vessels: and, in cruising, they are to speak with all the ships or vessels they meet at sea; and, if they have any reason to suspect they have goods on board designed to be smuggled, they are diligently to watch their motions, and keep them company till they are clear of the coast within their respective districts, in order to prevent the fraudulent landing of any such goods, and they are likewise to endeavour to prevent the exportation of prohibited goods of this kingdom; and, in case they

discover any such to have been shipped, or shipping for foreign parts, they are to seize the same, with the vessels, &c. For the due navigation of each of these vessels, there are appointed, beside the master, a mate, and a sufficient number of mariners, who are to be under the direction of the masters. They keep journals of their transactions, with their motions from place to place, to be delivered monthly to the collectors of their respective ports, in order to be transmitted to the commissioners. And by way of distinction, all smacks, yachts, or vessels, employed in the service of the customs, are to wear a jack and ensign, with the seal of office thereon, the mark on the ensign being twice as large as that in the jack; but not to wear a pendant.

All these persons have moderate salaries, or fees of small amount, in compensation for constant and frequently very laborious and dangerous service.

EXPENCE. The expence of collecting this revenue is estimated at 5*l.* 12*s.* 4*d.* per cent.

EXCISE. The next branch of permanent revenue to be considered is the excise, which is an inland imposition, paid sometimes on the consumption of the commodity, or frequently on the retail sale, which is the last stage before consumption. This is doubtless, impartially speaking, the most economical way of taxing the subject: the charges of levying, collecting, and managing the excise duties, being considerably less in proportion than in other branches of the revenue. It also renders the commodity cheaper to the consumer, than charging it with customs to the same amount would do; because generally paid in a much later stage of it; but, at the same time, the rigour and arbitrary proceedings under the excise laws, seem hardly compatible with the temper of a free nation. The frauds which might be committed in this branch of the revenue, unless a strict watch is kept, make it necessary, wherever it is established, to give the officers a power of entering and searching the houses of such as deal in exciseable commodities, at any hour of the day, and, in many cases, of the night; and the proceedings in case of transgressions are so summary and sudden, that a man may be convicted in two days time, in the penalty of many thousand pounds by two commissioners or justices of the peace; to the total exclusion of the trial by jury, and disregard of the common law. The time when the excise was first imposed has already been mentioned; it was projected during the reign of Charles I., but never assessed in a regular way till after his death; but the rebels and the royalists both had recourse to it as an expedient, though under an express protestation that it should be discontinued when the public peace was restored. Experience however proved it to be too valuable to resign, and before

before the republican government was abolished, the champions of liberty pronounced it, "the most easy and indifferent levy that could be laid on the people." From that period it has never been remitted, but numerous articles have been brought within its sphere.

The objects of the excise laws are enumerated under the following heads: 1. Ale, beer, cyder, perry, mum, metheglin, and mead. 2. Things sold by auction. 3. Bricks and tiles. 4. Candles. 5. Coaches and coachmakers. 6. Coffee, tea, chocolate, and cocoa nuts. 7. Glafs. 8. Hops. 9. Leather. 10. Linen cloth, silks, cottons, and calicoes. 11. Malt. 12. Paper. 13. Plate. 14. Salt. 15. Soap. 16. Spirituous liquors. 17. Starch, hair powder, and stone blue. 18. Sweets. 19. Tobacco and snuff. 20. Vinegar, and verjuice. 21. Wine. 22. Wire. It were too much to recapitulate, even in the most compendious abstract, the regulations affecting all these articles; they form the basis of many laws which are collected, apart from the general statutes, and sold for the information of the public; and a good practical abstract of them is found in Burn's Justice.

OFFICE. By the statutes for establishing the excise, it is ordered that one principal head office shall be kept in London; that all places within the bills of mortality shall be under its immediate care and management, and all other offices in the kingdom subordinate and accountable to it. This office was formerly established in the Old Jewry, but afterward removed to the south side of Broad-Street, where a commodious and magnificent building has been erected for the purpose, on the site formerly occupied by Gresham College.

COMMISSIONERS. The commissioners of excise are nine in number, having each a salary of 1000*l.* The duties of their office are analogous to those of commissioners of the customs.

OTHER OFFICERS. There is in the head office in its various departments, a great number of officers with different duties and salaries. The secretary has 825*l.*; the registrar 450*l.*; there are five commissioners of appeals; and examiners and other officers appointed to the superintendence of each branch of the revenue. The auditor has a salary of 1240*l.*; the comptroller general of 3290*l.*, and various others are liberally paid.

For transaction of business in the country, the commissioners appoint under their hands and seals, such persons as they think needful in each market town, to be there on every market day, in some known and public place, for receiving entries and duties, and performing all other things touching the revenue of excise: and if such office shall not be so kept in each market

town, the commissioners or others neglecting or refusing, shall for every market day forfeit ten pounds. And such person as shall come to such market town to make his entry or payment, and tender the same accordingly, and be able to prove such tender by oath of one witness, shall not be liable to any penalty for such weekly or monthly entries or payments, as should have been made or paid on such market day.

COLLECTORS. The kingdom of England and Wales, (exclusive of the bills of mortality) is divided into about 50 collections; some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties: every collection is entrusted to a collector, and subdivided into districts, within each of which there is a supervisor; and each district is parcelled into outrides and foot walks, within each of which there is a gauger or surveying officer.

GAUGERS. The commissioners, or sub-commissioners in their respective circuits and divisions, constitute under their hands and seals, such and so many gaugers as they find needful. In order to which, he who would be made a gauger must procure a certificate, that he is above twenty-one, and under thirty years of age; that he understands the first four rules of arithmetic; that he is of the communion of the church of England; how he has been employed, or what business he has followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two, he cannot (by the rules of the office) be admitted. He must also nominate two persons to be his sureties, and it must be certified that they are of sufficient ability; and that the said certificate is of his own hand-writing: the certificate must be signed by the supervisor of excise where the party applying lives, and at the bottom must be the affidavit of the party applying, that neither he, nor any one else to his knowledge, has, directly or indirectly, given or promised to give any treat, fee, gratuity, or reward, for his obtaining or endeavouring to obtain an order for his being instructed.

When an order for instruction is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have, being delivered to such pupil, he goes with, and attends the officer, who instructs him, and takes surveys, and in his own books makes the like entries, as if he was an officer, until the instructor certifies that he is fully acquainted with his duty. After he is thus certified for, and until he is employed, he is called an expectant, being to wait till a vacancy happens.

OFFICER'S

OFFICER'S OATH. No person is capable of intermeddling with any office relating to the excise, until he has, before two justices of the county where his employment shall be, or before a baron of the exchequer, taken the oaths of allegiance and supremacy, with another binding him truly and faithfully to execute his office, without favour or affection, and from time to time to make and deliver true account to persons duly appointed, and to take no fee or reward for the execution of his office, from any other person than his majesty shall appoint in that behalf. The justices certify the taking of such oath to the next quarter sessions, there to be recorded; and the officer enters a certificate thereof with the auditor of the excise: and, if any such person shall act before he has complied with these forms, he forfeits fifty pounds a month. He must also, within six months after his admission to the office, take the oaths and subscribe the declaration against transubstantiation, at the quarter sessions, in like manner as other persons admitted to offices.

OFFICER'S GENERAL DUTY. The business of the supervisor is, to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly perform their surveys, and make due entries thereof in their books and in their specimen papers; and every supervisor is in his own book to enter what himself does, each day and part thereof; and also set down the behaviour, good or bad, the diligence, or negligence, of the several officers of his district; and at the end of every six weeks to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. Each commissioner takes and peruses a portion of these diaries, and when he meets with any remarkable complaint against any officer, communicates it to the rest; who for small faults, admonish; for great ones, reprimand; for greater, reduce; and for the greatest, discharge the offender. The commissioner who peruses the diary, writes in the margin, admonish, reprimand, or as the case is. These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who, in a book called the reprimand book, places the admonitions, reprimands, and the like, to each officer's account, and gives notice of it to the offender. The reprimand book is resorted to, on discovering new faults; and if it is found, that the officer has before been admonished and reprimanded so often, that there are no hopes of amendment, he is discharged. The same book is likewise resorted to, when application is made for advancing or preferring officers, as frequent admonitions or reprimands are, if recent, a bar to preferment, but if for three years last he stands nearly without

without censure, those of more remote date are not much regarded. Reduced officers are degraded to the next inferior rank; those once discharged may be received again, but a second dismissal is fix'd.

The collector's business is, every six weeks to go his rounds; he is to be assisting in prosecuting offenders before the justices; to peruse the supervisor's diaries, and where he finds an officer complained of, to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact; he is also to notice how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection.

OFFENCES. Of the offences against the excise laws it is not possible to treat in detail, but the reader may find sufficient information respecting them in the authorities before referred to; the proceedings against offenders are summary; two justices having generally power to decide, with no appeal except to the commissioners. Penalties are extremely severe, and the vigilance of the officers is excited by a large participation, both in the property confiscated, and the fine imposed on the delinquent. For the security and guidance of those who deal in, or wish to remove goods subject to the laws of excise, *permits* are issued, expressing the quantity, names of the buyer and seller, payment of duties, and such other particulars as are judged necessary to give satisfaction and prevent fraud. The officers are protected from violence by laws similar to those which have been described as applying to those of the customs.

EXPENCE. The expence of collecting the excise duties is estimated at 3*l.* 14*s.* 6*d.* per cent.

STAMPS. The mode of raising a revenue by affixing a stamp to certain judicial and public proceedings, and to deeds, and other papers of contract, promise, or permission, owes its origin, in modern Europe at least, to the Dutch, by whom it was adopted about the middle of the seventeenth century. The French soon followed their example, and stamps were first imposed in England in 1671, by statute 22 Charles II. c. 3. The seizure of this exotic, which was then planted, is now become a mighty tree, striking its roots into the very foundation of financial prosperity, and extending its branches over every transaction of life, whether of law, commerce, contract, travelling, or amusement. During life, stamps are necessary in almost every act and occupation, and after death, no inconsiderable share of our property is claimed for stamps on probates, administrations and legacies. Yet the stamp duties are not in themselves a grievance, they give security to every species of business.

business on which they attach, are easily collected, and not severely felt. Their excess may occasion some apprehensions, but it would seem politic to abrogate a great many other taxes before any material alteration should be proposed in the stamp laws. A great inconvenience formerly attended them from the circumstance of their parts being dispersed through a vast number of statutes, and each addition being separately inserted into every stamp; instead of consolidating the whole into one general amount; but by statute 44 Geo. III. c. 98. this most desirable end has been attained, and all the objects of taxation by stamps are brought together under proper heads, and arranged in clear and copious schedules. To describe even by a catalogue all the articles subject to stamps would occupy a very considerable space, so numerous are they, and so widely diffused; but they may be found either by a reference to the act, to Burn's Justice, where they occupy thirty-six pages in the mere enumeration, or to various other publications on taxes. The variety of them may be imagined from this circumstance, that they extend from three halfpence, the demand on certain quack medicines, to 6000*l.* the duty on the probate of a will where the property of the testator amounts to half a million; but should a person bequeath that sum to one who was not related to him within a certain degree, the legacy stamp would amount to 40,000*l.*

OFFENCES. As the stamp laws are very simple, so the execution of them is entrusted to the magistrates, who have power to hear and determine all cases arising out of them, and generally to mitigate the penalties to a certain degree; but the party convicted may appeal to the next sessions. Forgery of stamps is punished with death; and other frauds against this department of the revenue are punishable on conviction by indictment or information, at the discretion of the court where the party is tried.

OFFICE. The stamp office was formerly in Lincoln's Inn; it is now in the east corner of the south side of the grand quadrangle in Somerset house. The apartments are admirably fitted up and well constructed for business, in the course of which every precaution is adopted to facilitate its progress, and prevent every species of fraud, whether in the purchaser or the officers themselves.

OFFICERS. In the stamp office are *five commissioners*, each of whom has 800*l.* a-year, and commodious apartments for his residence; the *secretary* has a separate office with six clerks; the *receiver's* salary is 800*l.*; the *comptroller* has 400*l.*; the deputy comptroller, and accountant general, 550*l.*; under them

are several clerks, and in all the other branches of the office a great many persons are necessarily employed but not extravagantly paid. The *solicitor* has an annual fee of 300*l.*, beside the profits on his business. In all parts of the country distributors of stamps are appointed, who are remunerated by a small poundage.

EXPENCE. The expence of obtaining the stamp duty is calculated at 3*l.* 15*s.* per cent.

MISCELLANEOUS TAXES. As the general amount raised by these as well as the preceding taxes, will be given in a table, it is not intended to treat at length on every minute particular of which they are composed, but under separate heads to notice the most peculiar circumstances respecting them.

ASSESSED TAXES. In this general denomination are included the rates on windows, houses, servants, carriages, horses of various descriptions, dogs, horse dealers, hair powder, and armorial bearings. In this division a set of taxes is included, which presses on the subject with aggravated hardships in many respects; particularly as the payment is direct, or in money without any equivalent, and that as to some of them, the party cannot by the exercise of any self denial or prudence diminish their pressure, as he may with respect to all those which were before enumerated.

COMMISSIONERS. The assessed taxes are under the management of five commissioners, who have salaries of 500*l.* and an office in Somerset House, and in the office there are many subordinate persons employed in transacting business and suppressing frauds.

DISTRICT COMMISSIONERS. These are subordinate to the principal commissioners, and appointed to act in certain districts throughout the kingdom. Each of these persons to act in London, or the circumjacent places, must swear that he possesses property to the amount of 5000*l.*, clear of all incumbrances, and specify in the body of his oath, the particulars in which it consists. They must also, in all cases, be inhabitants of the districts where they are appointed to act, and take an oath for the faithful execution of their duty.

CLERKS. At a meeting to be held annually in each district, the commissioners have power to nominate a clerk, and, if necessary, an assistant, who are to act for one year, unless removed for just cause.

ASSESSORS. They may also appoint assessors or presenters, to whom they must deliver a charge, and who are to make their assessment, on oath, of the particulars committed to them, and an omission may be punished by a fine not exceeding 20*l.*, nor less than 5*l.* The returns made by the assessors, with three
 duplicates

duplicates prepared by the clerk, are signed by the commissioners to be transmitted to the tax-office, and for other uses. - The assessors are bound to fidelity and diligence by an oath.

COLLECTORS. The commissioners also, in consequence of returns made by the assessors, appoint collectors for each district, to whom they deliver one of the before-mentioned duplicates, with warrants for the execution of their duties. The commissioners ought to take security from the collectors, to the full amount of their collection; and if they have not done so, it is competent to the church-wardens, overseers, or guardians of the poor, or any seven or more of a select vestry, where there are such vestries, to require the commissioners to take security, and to tender persons willing to become collectors and give security, in which case, the commissioners are restrained from appointing others without security. Many provisions are made for supplying deficiencies of collectors, in case of their not being duly appointed; and they are empowered, having a warrant from any two commissioners, to break open houses for the purpose of levying a distress, and if no distress is found, the commissioners may commit the person to gaol, till payment is made. These powers are the more necessary, as, in some cases of default of payment, the parish is liable to make it good.

INSPECTORS OR SURVEYORS. To rectify errors and detect frauds, inspectors or surveyors to the number of three hundred, acting in various parts of the kingdom, are appointed at the office in Somerset House. These persons have power, on detection of any false returns made by individuals, to punish them by a *surcharge* or double assessment, on the particulars withheld or omitted; these however may appeal to the commissioners.

ASSESSMENT. The manner of preparing the assessment of each individual, as prescribed by act of parliament, is this. The assessors, at certain times, fix on the doors of the church, chapel, or market-house, according to circumstances, general notices, requiring all persons resident within that place, to make out and deliver, within fourteen days, lists of the particulars for which they are liable to be assessed, exclusive of the house and window tax. They are besides to leave at every dwelling house inhabited, or supposed to be inhabited, by persons liable to assessment, notices for the keeper of the house, and for every lodger and inmate liable, who are thereupon bound to make out lists of all the particulars for which they ought to be assessed, and return them to the assessors, on penalty of being assessed according to the discretion of the assessors, guided by the lists last delivered, or the best information they can obtain. When the

the lists are returned, the inspectors may, before their allowance by the commissioners, amend them in particulars where the party appears to have mistaken, without aiming at fraud; or, in case of evident fraud or neglect, may punish him by a surcharge. For their better information in these matters, the commissioners, inspectors, assessors and other persons employed, may have recourse to, and make copies or extracts from the books of poor-rates or other assessments, within the parish, and the persons who ought to shew them are subject, if they withhold them, to a penalty not exceeding ten pounds for every offence.

EXPENCES. The lords of the Treasury have power to appoint salaries or allowances to the surveyors, inspectors, and other officers, and to discharge incidental expences. Every receiver general has an allowance of two-pence in the pound, for all monies paid by him into the Exchequer; every collector three-pence in the pound, for what he pays the receiver general, and the clerk to the commissioners has three-halfpence in the pound, on the same sum. These together make the calculated expence of getting in these taxes amount to 3*l.* 12*s.* 5*d.* per cent.

The preceding observations apply to the assessed taxes in the gross. Some in particular require a few observations. *

WINDOWS AND HOUSES. As early as the conquest, mention is made in *Domesday*, of fumage or fuage, vulgarly called smoke farthings; which were paid by custom to the king for every chimney in the house. And we read that Edward the Black Prince (soon after his successes in France,) in imitation of the English custom, imposed a tax of a florin upon every hearth in his French dominions. The first parliamentary establishment of this tax in England, was by statute 13 and 14 Cha. II. c. 10. whereby an hereditary revenue of two shillings for every hearth, in all houses paying to church and poor, was granted to the king for ever. On the revolution, by statute 1 W. & M. st. 1. c. 10., hearth money was declared to be "not only a great oppression to the poorer sort, but a badge of slavery on the whole people, exposing every man's house to be entered into, and searched at pleasure, by persons unknown to him; and therefore, to erect a lasting monument of their majesties' goodness in every house in the kingdom, the duty of hearth money was taken away and abolished." This monument of goodness remains among us to this day: but the prospect was somewhat darkened, when in six years afterwards, by statute 7 W. III. c. 18., a tax was laid on all houses (except cottages) of two shillings per annum, and a tax also upon all windows, if they exceeded nine, in such house. These rates have been
from

from time to time varied, and greatly extended; and power is given to surveyors, appointed by the crown, to inspect and survey houses, and windows.

The most remarkable circumstance attending the tax on windows, (for its progressive increase hardly merits notice, that being in the nature of every productive tax,) was the regulation called the *commutation act*. At the close of the American war, it was found, with respect to many articles, but particularly tea, that the high duties which had been imposed, far from benefiting the revenue to the extent which had been expected, formed an inviting encouragement to smugglers, and an irresistible temptation to many who would not else have incurred the risk of dealing with them. The duties on tea were in customs and excise 58l. 5s. per cent., besides a tax of five shillings and nine pence on every five pounds weight. Under these circumstances it was proposed in parliament, to free the commodity from all duties except one of 12½ per cent. on the price paid by the purchaser at the public sales, and to raise the deficiency, which would thus be occasioned in the revenue, amounting to 600,000*l.* by an additional tax on windows. After long and ingenious discussions, this plan was adopted, and its benefits are experienced beyond the supposed extent, for as tea was the staple commodity of the smugglers, the destruction of their trade in that branch, has caused it to languish in every other.

The house tax imposed by 18 Geo. III. c. 26, was at first from sixpence to one shilling in the pound, on the rack rent, it is now one shilling and four-pence in the pound, on houses at five pounds a year, and under twenty pounds, and on those which exceed forty pounds a year, two shillings and six-pence in the pound. The tax on windows varies in its progress. Houses having less than six windows, and not renting for five pounds per annum, are rated at sums not exceeding six shillings; seven windows produce eight; thence to ten windows, the advance is alternately eight shillings and twelve shillings each, making the gross amount 2*l.* 10*s.* The next advance is fifteen shillings per window, making eleven pay 3*l.* 5*s.*, and this continues till they arrive at thirty nine, for which 24*l.* 5*s.* are paid. From this a new system takes place, each advance including five windows, and rating them at thirty, fifty, or forty shillings additional at each stage, up to one hundred and eighty, for which 83*l.* are paid, and an additional two and sixpence for every window beyond that number.

SERVANTS. The tax on male servants is two pounds for one servant, and progressively increases, though not in a certain ratio, on each servant up to eleven; and persons keeping that
number

number or upwards pay six guineas per annum for each; bachelors pay an additional sum of 1*l.* 10*s.* for every servant. This tax extends, though with modifications, to persons hired for temporary services; travellers, clerks, shopmen, waiters, and stable keepers, employed respectively by merchants, tradesmen, and innkeepers; and to servants employed in husbandry.

CARRIAGES. This duty is progressive; persons keeping one four-wheel carriage, paying ten pounds per annum; and those keeping any number up to nine, at an increased rate for every one; for nine and upwards must be paid fifteen pounds each. Carriages with less than four wheels, pay, if drawn by one horse, 5*l.* 5*s.*; if by more, 7*l.* 7*s.* There are also duties on hired carriages and taxed carts, and a licence to be taken out by those who make carriages, or sell them, either in a shop or by auction, and a tax of one pound on every four-wheel, and ten shillings on every two-wheel carriage fold.

HORSES. The duty on horses, kept for riding or draught, is for one, two pounds per annum, and thence progressively, though not regularly, to twenty, which are rated at 4*l.* 5*s.* each. There are many variations in this tax, as on horses let to hire, those kept for racing, and those which are used by small farmers, or in husbandry, and in many other particulars, which can only be ascertained by reference to the acts. Horse dealers in London and the circumjacent district, pay twenty pounds annually; in all other parts of the kingdom, ten pounds.

DOGS. A person keeping one dog, not being a greyhound, hound, setting dog, spaniel, lurcher, or terrier, pays six shillings, per annum; and those who keep one of any of those classes, or more than one of whatever description, pay ten shillings per annum for each. Packs of hounds may be compounded for at thirty pounds.

HAIR POWDER. Persons wearing this ornament, pay one guinea per annum.

ARMORIAL BEARINGS. Persons keeping any coach or other carriage, pay if they wear armorial bearings, two guineas per annum; those who do not keep a carriage, but are chargeable to the duties on windows, one guinea; all others ten shillings and six-pence.

Such is the outline of the assessed taxes; but to the general system, and to each in particular, appertain many exemptions, exceptions, limitations, distinctions, regulations, powers and authorities, more than can here be in the slightest manner mentioned. Some of these taxes, as those on houses and windows, seem grievous from their amount; others, as hair powder, dogs and armorial bearings, rather insignificant; but to the others no objections can be made, unless they tend by excess, of which there

there is yet no probability, to restrain the use of the objects to which they apply.

Among the other miscellaneous taxes, two deserve particular notice; those on hackney coaches, and hawkers and pedlars.

HACKNEY COACHES. In 1662, four hundred hackney coaches were licensed in the cities of London and Westminster; but the sum exacted from them was then appropriated to the repairing of highways and sewers, and paving and cleansing streets in the metropolis; nor was it discovered, until 1694, that this might become a branch of the public revenue. By the first act passed for that purpose, permission was given to license a number not exceeding seven hundred hackney coaches; each licence to continue for twenty-one years, on payment of the fine of fifty pounds, and giving security for the additional sum of four pounds per annum; and a board of commissioners was appointed for granting licences, and for executing the different powers contained in the act. The number was increased in the reign of queen Anne, to eight hundred coaches; and the commissioners were also invested with authority to license hackney chairs, not exceeding two hundred, at the rate of ten shillings per annum, which number was increased first to three hundred, and afterwards to four hundred. In 1770, a thousand hackney coaches were permitted to be licensed, and the sum of five shillings per week, or thirteen pounds per annum, was imposed on them. That duty has since been doubled, consequently they now pay twenty-six pounds each per annum, and their number is augmented to twelve hundred; two hundred of these are hackney chariots, and of these the commissioners have power, if they think it necessary, to license two hundred more. Their fares are exactly the same as those of the coaches; but they carry no more than three persons, while the coaches carry four, with privilege to add another shilling to their demand, for every person beyond that number.

REGULATIONS. Besides the regulations respecting the fares of hackney coachmen, many strict laws are enacted for protection of the public against the fraud, insolence, and neglect which they might experience from these people, if unrestrained; some of which it may not be improper to mention. Every coach must have its number on each side; and for altering it, the penalty is five pounds, half to the informer, the other to the king: the like penalty attaches on any one driving a coach for hire without a licence. The commissioners may appoint inspectors, to see that licensed persons provide safe and clean coaches, and sufficient horses; and they may suspend the

licence of any person whose coach or horses shall be defective, and may continue such suspension until the same be rectified: and if any person shall refuse his coach and horses to be inspected, his licence shall be void. Every horse used in a hackney coach, must be at least fourteen hands high. Hackney coachmen are to provide and place in a convenient part of their coaches, check strings or wire; and if they ply without, to forfeit five shillings. Every coachman plying is obliged, at all times, to go any where within London or Westminster, or to a distance not exceeding ten miles; if he refuses to go at, or exacts more than his fare, he is to forfeit not more than three pounds, nor less than ten shillings; all agreements to pay more than the proper fare are not binding, and any overcharge, if paid, may be recovered back, with a penalty, not exceeding five pounds. Every hackney coachman, where coaches are standing, is compellable to go with any person when desired, and on refusal, (unless he prove being previously hired,) is liable to the like penalties. And if any person who drives a coach, or carries a chair for hire, acting under a person licensed, is guilty of misbehaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour; he shall, on conviction on oath, forfeit not exceeding ten pounds: and if he is not able, or refuses to pay, he shall be committed to Bridewell, or some other house of correction, to be kept to hard labour not exceeding two months; or the commissioners may revoke the licence.

If any person refuses to pay the fare, or defaces any coach or chair, any justice may grant his warrant to bring him before him; and on proof on oath, may award satisfaction to the party, and on refusal to pay, bind him over to the next sessions, who may determine the same.

COMMISSIONERS. The commissioners are five; their office is in Essex Street in the Strand. In all matters relating to complaint and punishment, the power of magistrates is equal with theirs, but those peculiar authorities which consist in the granting, revoking, and suspending of licences, give the commissioners great additional power. They have, besides, a right to make bye-laws, which, when ratified by the lord chancellor, or lord commissioners of the great seal, two chief justices, and chief baron, or any three of them, bind all persons licensed, and all renters of licences.

HAWKERS AND PEDLARS. Itinerant retailers, known under the name of hawkers, pedlars, or petty chapmen, have long been an object of taxation, partly for the sake of revenue, but perhaps principally for the purposes of police. In 1697, a licence duty was first imposed on them, which has since undergone

undergone several variations. By 50 Geo. III. c. 4. every hawker, pedlar, petty chapman, or other trading person, going from town to town, or to other men's houses, and travelling either on foot, or with horse, horses, or otherwise, in England, Wales, or Berwick-upon-Tweed, carrying to sell, or exposing to sale, any goods, must pay a duty of four pounds for each year. And for every horse, or other beast bearing or drawing burthen, the additional sum of four pounds yearly. They cannot obtain a licence without a certificate signed by one clergyman and two reputable inhabitants attesting their character and reputation; and they are under many severe and rigorous regulations, being restrained from vending many sorts of goods, as tea, and spirituous liquors; prohibited from selling by auction in places where they are not resident householders, under a penalty of fifty pounds; obliged to have the words *Licensed Hawker*, with the number of their licence printed conspicuously on all their packs, inclosures, and conveyances; if they deal in smuggled goods, they forfeit their licences; if they trade contrary to their licences, or do not produce them when lawfully required, they forfeit ten pounds; for using a forged licence, the penalty is three hundred pounds; persons lending or hiring out a licence forfeit forty pounds; and the like sum is the penalty of trading without a licence. The act does not extend to persons selling fish, fruit, or victuals, nor to the makers or workers of any goods, and their servants, carrying about their own manufactures, nor to tinkers, coopers, glaziers, plumbers, or harness makers, travelling and carrying with them their own tools. Penalties above twenty pounds, are recoverable by action at Westminster; under that sum, by information before one justice, who on default of payment, may commit, not exceeding three months: there is an appeal to the next session.

COMMISSIONERS. The duties under this act are performed by the commissioners for hackney-coaches; but they cannot convict or levy penalties for offences against this act, as they can under the other branch of their jurisdiction.

AUDITORS. For the security and satisfaction of the public, in respect to the receipt and appropriation of the monies raised by many of the before-mentioned taxes, an office for auditing public accounts is established in Somerset Place. It consists of five commissioners, two inspectors general, with four subordinate inspectors, clerks, and other officers. There is also a separate office, in Palace Yard, for auditing the accounts of land revenue, land tax, and window tax, in which the auditors have salaries amounting to upwards of two thousand pounds.

LOTTERY. Among the resources of the state which cannot be termed permanent, but which are so far from occasional as to be regularly expected, may be mentioned the lottery. This plan was, on its first introduction into England, sparingly used, and frequently intermitted: it afterward involved comparatively little of hope or fear to what it does at present; the capital prizes being smaller, and a portion of the money adventured being returned on a certain number of blanks. The general face of the scheme was changed when the duke of Grafton became minister; the capital prizes being greatly augmented in amount, and the returns on blanks being generally discontinued. But the tickets were formerly considered, less as productive of profit to government, than as a bonus or allowance to those who subscribed the loans. Modern finance, however, has so improved this resource, that it now sometimes augments the revenue by nearly half a million a-year; independently of the stamps on shares of tickets, and the licences taken out by the proprietors of offices, which amount to fifty pounds each. These persons are empowered to sell tickets entire, or divided into shares for the accommodation of those who wish not to encounter a large venture. The complicated interest which these office-keepers have, as subscribers to a general scheme, and as individuals pressing separate claims to public notice, with a view to emolument, occasion some very curious contrivances with respect to the retention or sale of tickets, and some very extraordinary essays in the art of puffing.

The mode of making a lottery is similar to that of raising a loan: the minister announces his intention to the monied men, and they bid for the tickets such prices as they think they can afford; the minister closes with the highest, and the purchasers are at liberty to form a scheme for distribution of the prizes. Lottery tickets then become, like other stocks or subscriptions, an object of active speculation, in which there are bulls and bears, differences paid instead of the actual purchase and transfer of tickets, and all the eagerness and dexterity are displayed, which characterize other transactions in the alley.

COMMISSIONERS. The lotteries are managed by commissioners, who superintend all transactions relative to the putting the numbers, and the corresponding blanks and prizes, into the wheels from which they are to be drawn; and attend daily in rotation, during the drawing, to ascertain the transactions of every day. They have under them, a convenient number of clerks and messengers, and the annual value of their situations is said to be 200*l.* each.

DRAWING. The mode of drawing a lottery is this: two large coffers or boxes are prepared, which, from their being
circular

circular and turning on an axis, are called wheels. Into one is put a series of numbers from one to the highest total of tickets mentioned in the scheme or plan of the lottery; they are written on papers of equal sizes and folded exactly alike. Into the other wheel are put similar pieces, marked with the prizes from the highest to the lowest proposed; and blank papers exactly similar making up the residue of numbers contained in the numerical wheel. On the day appointed for the beginning of the drawing, two boys from the school of Christ's Hospital, called the Blue-coat-School, attend, and one being placed before each wheel, they put in their hands at the same time, and each draws forth one paper: that containing the number is first proclaimed by the commissioner, and taken down in writing by clerks employed for the purpose; the word contained in the other, is then similarly proclaimed and written against the number. If a prize, the holder of the ticket becomes entitled to the sum mentioned; if a blank his stake is utterly lost. The same process is observed with respect to every ticket; and it is now usual to declare the drawing terminated when all the prizes are drawn, and sometimes without putting into the wheel any blanks; the numbers remaining after the drawing of the prizes, being blanks in course. The former mode is more popular, and perhaps more justly satisfactory, and therefore most frequently pursued.

LAWS RELATING TO THE LOTTERY. It is to be apprehended that in the present state of finance, and indeed of society in general, reflections on the morality of a national system of gambling would be of little avail. The desire of becoming suddenly and immoderately rich, diffused among all classes of society, produces many beneficial and glorious exertions: but it cannot be expected that such a desire, connected with the spirit of adventure, should be uniformly confined to such transactions as a sound political moralist can seriously approve; and therefore, it is not surprising that, in an age when every one seems to resign himself, in some degree, to the influence of fortune, lotteries have been almost constantly resorted to. As a tax, indeed, a lottery is most unexceptionable; for no individual is compelled to bear any portion of the burthen, but voluntarily brings in his sacrifice, in hopes of propitiating fortune: nor would it avail any thing to demonstrate to any one who is disposed to become an adventurer how much too dear he pays for his ticket, and how numerous the chances are against him; a sanguine confidence, not to be repressed by disappointment, hurries him on, and year after year lotteries are proposed, and tickets still sold at increasing prices.

ILLEGAL INSURANCES. From this legal system of gambling, another inconvenience has been found to arise; that it gives a strong impulse to those who are inclined to prey on the public, and particularly on the lower class, by connecting with the state lottery, another popular, but more destructive mode of adventure, commonly denominated insuring. This is performed in the usual manner of similar transactions in commerce; the party desirous to insure, fixes on a number, pays a premium, and according to its amount, receives, if the number is drawn on the given day, a larger sum in return. Were this adventure conducted on the fairest principles, it would be liable to this objection, that the events being so frequently decided, the minds of those engaged are kept in a most dangerous ferment, and all the passions which enter into the character of a gamester are goaded to their utmost fury. The insurance of lottery tickets by their real proprietors against the contingencies that a single day may produce, is as reasonable as any other of the various insurances which form an appendage to commerce: but after the establishment of lotteries, it was soon found that the practice of insuring by those who, possessing no tickets, fixed on numbers as a mode of gambling, was so common, as to occasion general vice and misery; and that shares, chances, or policies, regulated by the events of the lottery, but producing gain only to the projectors, were multiplied, in such a manner as greatly to deprave the public morals, and to reduce the profits which government had a right to expect from the selling of tickets and shares. Against these practices a long series of legislative edicts has been directed; and at length the system adopted for suppressing illegal adventures in lotteries, is carried to a very great extent. By the laws now in force, all lotteries, whether dependent on tickets, cards, dice, or any other contrivance, unauthorized by parliament, are declared to be nuisances; and all gaming in them, whether for lands, goods, money, or other beneficial event, is forbidden under heavy penalties. With respect to state lotteries, it is enacted, that every person who shall publicly or privately set up, or keep, by himself or any other, any office or place for buying, selling or dealing in lottery tickets, or shares, without being licensed; or shall sell the chance of any such ticket, or share, for a day or part of a day, or less time than the whole time of drawing in such lottery then to come; or insure, for or against the drawing of any such ticket; or shall receive any money or goods in consideration of any agreement, or promise to repay any money, or to deliver the same, or any plate, jewels, or other goods whatsoever, if any such ticket shall prove fortunate or unfortunate; or upon any other chance, event, or contingency relative to the drawing
any

any such tickets, whether as to the time of their being drawn, or otherwise ; shall be deemed a rogue and vagabond, and shall be punished accordingly. These offenders are also liable to a penalty of 500*l.* for every offence, for which they may be held to bail in any of the courts at Westminster. And on proof made of the offence, if they have not before been sued for it, they must be sent to the house of correction until the next sessions: and the justices at such sessions must examine the cause and proceed therein, as by law directed. On complaint upon oath before one justice, of any offence committed against the act for suppressing unlawful lotteries, in any house or place within the jurisdiction of such justice, whereby any offenders may be liable to be punished as rogues and vagabonds, such justice, by warrant, may empower any person, employed by the commissioners of the stamp duties in the execution of the acts for regulating lotteries, by day or by night, (but if in the night in the presence of a constable, who is required to be aiding and assisting therein,) to break open the doors of any part of such house, or place, where such offence shall have been committed, and to enter and seize all such offenders or other persons, who shall have knowingly assisted or been in any wise concerned in committing such offence, and convey them before any justice of the county, city, or place wherein such person shall be so apprehended, to be dealt with according to law ; and all persons who shall have been discovered in such house or place, knowingly aiding, assisting, or any ways concerned with such offenders in carrying on any such transactions, shall be deemed rogues and vagabonds, and punished accordingly : and the officer having the execution of such warrant, or person acting in his aid or assistance, may arrest any such persons so discovered in such house or place, and convey them before a justice as aforesaid. And if any person shall forcibly obstruct or hinder any such officer, or others acting in his aid or assistance, in the execution of their duty herein, he shall be deemed an offender against law, and the court before whom he shall be tried and convicted may order him to be fined, imprisoned, and publicly whipped, as in their discretion shall be thought fit. And all persons, although not discovered in such house or place as aforesaid, who shall employ any person in carrying on any of the transactions aforesaid, or be aiding or assisting therein, shall be deemed rogues and vagabonds, and punished accordingly. And if any person shall be brought before any two justices, and shall be convicted of any offence against the said act, whereby he shall be adjudged a rogue and vagabond, such justices may order him to be sent to the house of correction for any time not exceeding six, nor less than one calendar

month, and until the final period of the drawing of the lottery, in respect whereof such offence shall be committed; and such proceedings shall not be subject to appeal, nor removable by *certiorari*. Almost every new lottery act contains clauses of additional penalty, calculated to defeat some new contrivance in the agents of fraud, or to facilitate and render effectual the proceedings against them.

Restrictions so severe would extirpate, if it could be effected by force, the practice against which they are directed; but the desire of gaining by insurance in the lottery is so firmly rooted in the minds of the lower class, especially in the metropolis, that the severity of law has not altogether produced the desired effect, and for some time increased the virulence, if it has limited the extent, of the evil. The system of illegal insurance in lotteries was carried on in the manner of a powerful association against the regulations of society. Certain men of large property were at the head of the establishment; under them numerous desperadoes were appointed, who by all sorts of clandestine means, obtained money from those who were disposed to adventure, and brought it to the principals, who undertook for the event, and allowed their subordinates a considerable profit on the premium. With respect to the penalties, these illegal traders secured themselves by strength of purse; the means of detecting and bringing to justice the persons taking illegal insurances were in the hands of a few men, generally known as common informers, and these acted in subordination to certain chieftains, whom the illegal insurers largely bribed in the course of every lottery, and thus not only protected themselves against the attacks of these leading informers, but also gained the advantage of their powerful succour, if they or any of their agents were attacked by the subordinate conductors of penal prosecution. Thus although it was notorious that in every lottery, insurances were taken to a large amount, yet the courts of law rarely witnessed a prosecution; the institution of them being altogether prevented, or those which were commenced being illegally compounded; and the whole force of these tremendously penal statutes spent itself on a few wretches, who having established their illegal schemes without the sanction of the wealthy governors, or having been too unguarded in their conduct to hope for protection, were sent to Bridewell or the house of correction for a few weeks. Thus the acts of parliament did not extirpate this practice, but altered the nature and manner of it. Before they were passed, insurances were taken, almost publicly, by persons who were decent in their manners, and little different from other clerks to brokers or lottery office keepers; from

from them, therefore, the persons who insured, contracted no vice beyond that which was connected with the very act about which they were employed: afterward, none would accept the task of collecting insurances except the most abject and degraded of mankind, persons whose whole lives were spent in illegal and infamous pursuits; the underlings at gaming tables, and servants at brothels, pickpockets, passers of false money, and all the tribe who prefer the slavery of illegal enterprise to the labours of honest industry; from these every syllable was contamination, and the servant or mechanic, whom the desire of gain led to associate with them, could not escape the infection of their principles, manners, and conduct. Another effect of these laws was, that, as none but persons of a particular character and connection could pursue this iniquitous system, it grew into a sort of monopoly, the whole business being ingrossed by a few individuals, who fixed what premiums they pleased on insurances, plundered the unfortunate votaries of their practice at discretion, and accelerated with mighty steps all its ruinous consequences. These persons, besides the large fees they paid to informers, allowed the collectors of illegal insurances $7\frac{1}{2}$ per cent. on the money they brought: to afford this, they calculated their premiums, so that the smallest reservation in their favour was thirty per cent., but in many instances it was much greater; and by such means they were enabled to purchase estates, and live luxuriously on the spoils of unfortunate wretches, whom they drove to want, guilt, despair, and suicide or the gallows. Of late, this evil has been much better provided against, by taking the penalties out of the hands of common informers, and permitting them only to be sued for by the attorney-general; and by the vigilance and care of the Stamp Office, in prosecuting as rogues and vagabonds all offenders, without distinction.

LITTLE GOES. When no state lotteries are being drawn, adventures are offered in a fictitious species of lottery, called a *Little Go*, where, without any voucher or security for fidelity or fairness, a certain number of tickets is drawn, or supposed to be drawn, for a series of days, not for the purpose of distributing prizes, or deciding any event, generally connected with the lottery, but merely for that of collecting premiums for insurances. These too are declared public nuisances; and it is enacted, that no person shall keep or suffer to be kept in his house, any office or place for any game or lottery called a *Little Go*, or for any other lottery whatsoever, not authorized by parliament, on pain of five hundred pounds for each offence, recoverable in the exchequer by the attorney-general to the use of the king; and such person, whether he transacts such business himself or employs

plays others, shall be deemed a rogue and a vagabond. Justices are likewise empowered to break open doors, and pursue the same measures as against those who take illegal insurances in the state lotteries.

In concluding this part of the subject it may be fit to mention that the legislature has frequently authorized the drawing of lotteries for the purpose of selling estates, museums, collections of pictures, and other things for which purchasers could not otherwise have been found : with respect to estates, at least, there are many reasons why this indulgence should not be too easily granted.

The Property-tax being now repealed, and the Convoy-duty having, in course, terminated with the war, it is necessary to make only slight mention of them. During the war which began in 1793, Mr. Pitt brought forward, under the name of an Income-tax, an assessment on the annual revenue of every individual in the kingdom, amounting, on those above 200*l.* a year, to ten per cent. But as the interest of money in the funds was untouched, and the sum of income which was assessed slightly or not at all, was so considerable, evasion was practised to a considerable extent, and the tax on the whole, was not so productive as might have been expected. This tax was repealed at the peace in 1802; some arrears charged upon it being provided for by an increase of the assessed taxes. On the renewal of hostilities, the ministry, of which Mr. Addington (Lord Sidmouth) was the chief, introduced the property-tax, subjecting the dividends on the public funds to its immediate operation, and allowing very few abatements or exceptions. The assessment was five per cent. ; in the last administration of Mr. Pitt, it was raised to six and a half ; and by the next ministers, Lord Grenville and Mr. Fox, it was carried to ten per cent. ; at which point it continued till the end of the war, when in consequence of petitions from all parts of the kingdom, it was repealed. The convoy duty was imposed in 1798, as a tonnage on ships for every passage out and home, varying, according to the ports of destination, from sixpence to three shillings per ton. It brought a large revenue, and was not deemed injurious to commerce.

The following tables exhibit a general view of the income and expenditure of the United Kingdom for the year ending the 5th of January 1817, and for some portion of that which was then elapsing : they are given in the Fourth Report of the Select Committee of Finance to the House of Commons, in the Session of 1817. The document from which this extract is made furnishes the most authentic and useful information on the subject.

INCOME OF GREAT BRITAIN.

1. *Consolidated Fund.*

The income of this fund, ending 5th January	£.
1817, amounted to - - - -	39,083,558

2. *Ways and Means granted by Parliament for the Supply of the Year.*

Annual duties upon malt, sugar, &c. - -	3,000,000
Excise duties, continued to 5th July, 1821 -	3,500,000
Profits of lotteries, after re- serving $\frac{1}{3}$, the proportion for Ireland -	168,459
Old naval stores, after re- serving 79,988 $\frac{1}{2}$ the pro- portion for Ireland -	599,916
	<hr/> 7,268,375

Unclaimed dividends (after abating 206,175 $\frac{1}{2}$ repaid to the Bank in respect of dividends afterwards claimed), interest on land- tax redeemed by money, and unclaimed money in the hands of the tellers of the exchequer -	239,871
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The surplus of the supply of the year 1815, granted as part of the ways and means for the year 1816, was 5,663,755 $\frac{1}{2}$ of which, however, 959,090 $\frac{1}{2}$ was applied to the reduction of the navy debt, leaving applicable to defray the supply voted for 1816, only - - -	4,704,665
	<hr/> 4,944,536

Total ways and means - -	<hr/> 12,212,911
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And the total income, ordinary and extraordinary, exclusive of income arising from any loan funded, or from any addition to the unfunded debt, was	51,296,469
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 EXPEN-

EXPENDITURE OF GREAT BRITAIN.

Consolidated Fund.

Charge upon the Consolidated Fund for the year	£.
ended 5th January 1817	- - - 39,693,430

Supply for the Service of the Year 1816:

The total amount of supply granted, and of expences incurred, on the joint account of Great Britain and Ireland, for the year 1816, was 26,342,422*l.*; of which, 15-17ths, the proportion of Great Britain, was - - 23,243,314

The supply granted, or expences defrayed, on the separate account of Great Britain, including 1,265,232*l.* applied to the reduction of debt, was 3,921,150

Making the total supply	-	27,164,464
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And the total expenditure for the year 1816, on account of Great Britain	- - -	66,857,824
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INCOME OF IRELAND FOR 1816.

The net amount received into the exchequer from the customs, excise, stamp-duties, and every other branch of revenue and income, was - 4,561,353

There was also paid into the exchequer of Ireland, or remaining to be remitted on account of the loan contracted for in England, in the year 1815 2,622,640

Making a total receipt of	- -	£ 7,183,993
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REVENUE.

141

EXPENDITURE.

The charge upon the Consolidated Fund, in respect of the public funded debt of Ireland, in Ireland and Great Britain, including 2,438,124*l.* payable to the commissioners for the reduction of the said debt, was - - £6,446,826

For the civil list, and other permanent parliamentary charges - - 539,138

Making the total of permanent charges - - 6,985,964

The expenditure on account of the services of the last or former years, actually paid within the above period, was - - - 3,075,561

10,061,525

And there was remitted to England, and paid into the exchequer, towards making good the proportion of Ireland of 2-17ths of the joint expenditure 1,184,009

Making the total issues - - - 11,245,534

INCOME.

The total revenue and income of Ireland was, in the year ended the 6th of January 1817, as above stated - - - 4,561,353

EXPENDITURE.

The total permanent charge upon the consolidated fund of Ireland, for the year ended 5th January 1817, was, as before stated - - - 6,285,964

The total amount of the supply granted, and of the expences incurred, on the joint account of Great Britain and Ireland for the year 1816, was 26,342,423*l.*; of which, 2-17ths, the proportion of Ireland, was - 3,099,108

The supply granted or expence defrayed on the separate account of Ireland, was - - - 193,978

Making the total supply - - - 3,293,086

And the total expenditure for the year 1816, on account of Ireland - - - £10,279,050

The

The result of these statements is, that the total revenue and income of Ireland for the year 1816, amounted to 4,561,353*l.*; that the charges of her debt, and other payments of a permanent nature, amounted to 6,985,964*l.*; that the supply for that year to be defrayed by Ireland, as above stated, was 3,293,086*l.*; making a total expenditure of 10,279,050*l.*; of which the sum of 2,438,124*l.* was issued to the commissioners for the reduction of the national debt of Ireland.

The exchequer of the two countries having, from the 5th of January last, become united, and being now administered by one authority, it is proposed to take a view of the combined receipt and expenditure of the United Kingdom, as more particularly applicable to the year ended 5th January 1817.

INCOME.

The total income of Great Britain,
applicable to the permanent charges
of that year, and to the supplies
granted for that period, was, as be-

fore stated	-	-	-	£51,296,469
And of Ireland	-	-	-	4,561,353

Making a total income of	-	-	55,857,822
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EXPENDITURE.

The total charge upon the consolidated
fund in England was

	-	-	39,693,430
The charge of the debt of Ireland, and other payments of a permanent na- ture, was	-	-	6,985,964

Making the total permanent charge of the
United Kingdom

	-	-	46,689,394
The total supply of the two countries, including the separate charges of each, which have from the 5th of January last become joint charges, was	-	-	30,457,550

Making a total ex _p enditure of	-	-	£ 77,146,944
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Of which 15,078,772*l.* was on account of reduction of debt
existing before the 5th of January 1816.*

* Great Britain	-	-	-	£12,640,648
Ireland	-	-	-	2,438,124

£15,078,772

Abstract

Abstract of the Nett Produce of Great Britain, in the years ending 10th October 1816, and 10th October 1817; and also, the total produce of the Consolidated Fund, the Annual Duties, and the War Taxes.

	YEAR ENDING OCT. 10, 1816.	YEAR ENDING OCT. 10, 1817.
	£	£
Customs - - -	4,789,892	5,748,728
Excise - - -	18,326,328	16,160,220
Stamps - - -	6,024,775	6,232,213
Post Office - - -	1,450,000	1,349,000
Assessed Taxes - - -	6,170,181	6,001,996
Land Taxes - - -	1,123,402	1,197,848
Miscellaneous - - -	335,179	293,639
Unappropriated War Duties - - -	-	1,429,879
Total Consolidated Fund	<u>38,219,757</u>	<u>38,413,523</u>
Annual duties to pay off Bills —		
Customs - - -	2,105,455	3,183,339
Excise - - -	541,547	558,787
Pensions, &c. - - -	16	4,016
Total Annual Duties	<u>2,647,018</u>	<u>3,746,142</u>
Permanent and Annual Duties	<u>40,866,775</u>	<u>42,159,665</u>
WAR TAXES —		
Customs - - -	1,777,310	525
Excise - - -	5,504,715	3,100,814
Property - - -	11,990,063	2,171,615
Total War Taxes	<u>19,272,088</u>	<u>5,281,954</u>
Total Net Revenue	<u>£60,138,863</u>	<u>£47,441,619</u>

The

The Irish and Portuguese payments for the interest on their respective debts, payable in England, are excluded from this statement; and the war taxes appropriated to the interest of loans charged on them, are not included in the consolidated fund, but under the head of War Taxes, to the quarter ended 5th July 1816, inclusive; from which period certain war duties of customs being made perpetual by act 56 Geo. III. cap. 29, are included under the head Consolidated Fund.

The total of the permanent and annual duties for the last four quarters exceeds the total of the four preceding quarters by above 1,200,000*l.*, viz. :

Total of 1816.	-	-	-	-	£40,866,775
1817.	-	-	-	-	42,159,665

Balance in favour of 1817	1,292,890
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The total consolidated fund for the same period is, for 1816.	-	-	-	£38,219,757
1817.	-	-	-	38,413,523

Leaving an excess in favour of 1817, of	193,766
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The total war taxes for 1816. were	-	£19,272,088
1817.	-	5,281,954

Against 1817	13,990,134
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But this falling off is occasioned by the repeal of the war excise duty on malt, and the property tax.

Thus the difference between the whole produce of the Revenue for the year is as follows :

It was in 1816.	-	-	-	-	£60,138,863
1817.	-	-	-	-	47,441,619

Difference	12,697,244
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or 483,895*l.* more than the difference (*viz.* 12,213,349*l.*) between the produce of the war excise duty and the property tax in 1816 and 1817.

OTHER TAXES. However enormous this load of taxation may appear, it is far from the whole sum that is drawn from the people; poor rates, turnpikes, tolls, and the assessments for paving, watching, lighting and cleansing towns, with other charges which will be noticed in the progress of this work, give amounts more than equal to the revenue of many sovereign princes, even at this time, when many small potentates have been swallowed up in the gulph of the French revolution.

SINKING FUND. It is not to be supposed that such enormous burthens, however judiciously placed or patriotically borne, can be for ever increased without final ruin to a nation. Those whose love of their country has made them too sensitive on this account, have at least this countenance for the foundation of their fears, that at a very early period of the funding system, those statesmen whose glorious exertions contributed most to establish the constitution, foresaw the necessity of restricting the amount of the national burthens, and of providing a fund for their final reduction, or perhaps annihilation. Of the first sinking fund, its progress, benefits, alienation, and final extinction, it is not necessary here to treat*, nor would the mention have been required, but as it formed a precedent for the establishment of another, and a caution against the mischiefs which would ensue, should any minister, urged by financial distress, or deluded by sophistical reasonings or erroneous calculations, destroy this strong mound against the irruption of national ruin. Some time after the American war, when the finances of the country had derived great benefit from judicious regulations, when the debt created during that war was almost entirely funded, and the nation's burthens adapted to the national powers; it was determined to make a certain, permanent and unalienable provision for the necessary purpose of reducing the national debt, which then amounted to about 240,000,000*l.* The fund devoted to this object was to consist of an annual million to be paid quarterly, and of all the annuities for lives, or for limited terms of years, as they should expire, the taxes appropriated for the payment of them still continuing to be levied upon the people. And the sinking fund, thus secured, was vested in six commissioners of high rank and character, for the purpose of paying off any branch of the debt, which might be above par—(parliament previously taking the necessary steps to enable them,) and buying from those who offered

* For a clear and masterly account of this fund, see *Coxe's Memoirs of Sir Robert Walpole*, c. 40.

them for sale, any branches of it, which were below par*, or should they fail, and no provision be made by parliament, such funds as they might think most eligible, though above par. All dividends arising from such purchases are also to be immediately invested in the same manner; the commissioners are directed to make their purchases, in sums nearly equal, on every day of the week except Monday and Saturday. They may subscribe a sum, not exceeding their annual income, in any new loan bearing interest at the same rate with some of the existing branches of the funds. And, lastly, whenever the annual income, including the annual million, as well as the dividends arising from the purchases, shall amount altogether to four millions, "The dividends due on such part of the principal or capital stock, as shall thenceforth be paid off by the said commissioners, and the monies payable on such annuities for lives, or years, as may afterwards cease and determine, shall no longer be issued at the receipt of his majesty's exchequer, but shall be considered as redeemed by parliament, and shall remain to be disposed of as parliament shall direct." It is evident that a fund, possessing so many copious sources of accumulation, and having no outlet of expenditure†, must soon increase to a prodigious amount; and indeed, the measure has been of very important service, not only to the public in a corporate capacity, but also to the vast number of individuals, who have property in the public funds, and to such landholders as have occasion to bring their estates to market, and by keeping the interest to be obtained by buying into the public funds from rising to a very extravagant height, it is also of great benefit to the commercial world. Some political writers have amplified the advantages flowing from this permanent sinking fund to an incalculable extent; but its merits need no exaggeration.

By the operation of this sinking fund, it has been observed, that the reduction of the debt existing before the war which began in 1793, would attain what is termed its maximum, or an interest of four millions a-year, probably in 1808, but in no case later than 1811, and consequently that debt which was, in familiar language, termed a mill-stone about the neck of the nation, would be completely annihilated in January, 1846: this was on a supposition that the three per cents. should be at the average price of eighty five, but as they have been for a long time far below that average, the redemption must

* *par* is the par price of an annuity of *£*1. It has also been stated as the par price of one *q.* by most writers on the finances.

† There is a trifling expence of about 1,60 *l.* a-year for the secretary, broker, &c. but it does not appear to be borne by the fund, the amount of all the various branches of income being exactly balanced by the purchases made in the year.

have been greatly accelerated, and the term of patriotic hope proportionately abridged. The exact period at which the redemption of this debt will be effected, at every supposable average price, may be seen by the following table; and as the dividends due on such parts of the old debt, as shall be paid off after the sinking fund shall have attained its maximum, and the annuities which shall afterwards fall in, will be at the disposal of parliament; the period of repealing taxes annually, to an amount equal thereto, cannot be very long delayed.

An account of the several dates when the old sinking fund will have increased to its greatest amount, 4,000,000*l.* a-year, (adding thereto the 200,000*l.* annually voted by parliament:) also the dates when the whole amount of the debts incurred before the year 1793, will be redeemed, by the operation of the sinking fund, according to the several average prices at which the three per cents. funds may hereafter be purchased.

Average Prices of the 3 per cent. Funds from the 1st Feb. 1799.	Dates when the Sinking Fund will have increased to 4,000,000 <i>l.</i> its greatest Amount.	Dates when the whole of the debt incurred before the Year 1793, will be cancelled.
55	November, 1808	October, 1832
60	August, 1809	October, 1835
65	April, 1810	September, 1838
70	February, 1811	August, 1841
75	February *, 1808	June, 1842
80	February, 1808	April, 1844
85	February, 1808	January, 1846
90	February, 1808	January, 1848
100	February, 1808	May, 1852

Excess above 4,200,000*l.*, in the first year after the old sinking fund shall attain its maximum, according to the prices of stocks as under.

75 <i>l.</i>	- -	23,600 <i>l.</i>	85 <i>l.</i>	- -	376,800 <i>l.</i>
80 <i>l.</i>	- -	203,300 <i>l.</i>	90 <i>l.</i>	- -	488,400 <i>l.</i>
100 <i>l.</i>	- -	-	-	-	643,900 <i>l.</i>

* It is obvious that, in some cases, the sinking fund will increase to its greatest amount sooner with the stocks at a high price than at a lower one, by the redemption of the 5 per cents. or 4 per cents.

REDEMPTION OF LOANS. The sinking fund established in 1786, had already been productive beyond expectation, inasmuch that on the fifth of April, 1792, when its operation for six years was complete, the commissioners had bought in 9,441,850*l.* of the capital of the national debt. It was now, however, thought proper, that, besides that general provision for buying up the national debt, there should be a particular provision made for the gradual extinction of any future debts to be created. For that purpose Mr. Pitt wisely availed himself of the plan proposed many years before by Doctor Price, by establishing, along with the funds necessary for paying the interest of any debt to be created, an additional annual fund of one hundredth part of the capital created. This plan was sanctioned by the authority of parliament, the funds appropriated for it being placed under the management of the same commissioners who have the charge of the annual million, the proceeds to be improved in the same manner. And it was enacted, that when the income of the fund should arise to three millions annually, exclusive of the sums paid in from the exchequer, the dividends should no longer be issued, and the capital to that amount should be considered redeemed. This is by far the most judicious, and the most powerful, dissolver of the national debt ever yet invented, and it has the peculiar advantage of bringing the remedy along with the disease. This sinking fund, and that established in the year 1786, have made a silent but a rapid progress in reducing the debt in the fairest possible way by buying, at the current price, from those who are desirous of selling. There need no longer be any of the tumult, vexation, and distress, which have been produced by the violent, not to say cruel and unjust, measure of compelling any of the national creditors to receive payment, or to submit to a reduction of their income. It is also a great beauty of this plan, that the higher the interest of money is, or, in other words, the lower the prices of the funds are, the quicker is the progress made in extinguishing the national debt, or of transferring the dividends from the sellers to the national purse, for the purpose of annihilating, in time, a portion of the taxes which press so hard upon the community. And a great advantage to all proprietors of the national debt is, that the constant and large purchases made by the commissioners, keep the value of their property considerably higher than it could be, if such large sums were not thus taken entirely out of the market: hence also the nation, corporately considered, derives a great advantage, from thus keeping up the price of the funds, in negotiating new loans on more favourable terms than could otherwise be obtained. By buying only from those creditors who are desirous of selling
their

their stock, no one is distressed by being compelled, as in some other nations, to accept an annual payment of one or two per cent., which being too trifling to be reinvested or employed to any useful purpose, serves only to wither away the capital in the hands of the creditor, and perhaps to work his ruin; this admirable plan has the great advantage of reconciling the interests of all parties.

As the operation of this truly grand principle of finance is perpetual, the following table will fully display its effects under all probable and almost all possible circumstances.

Account of the several periods of time in which each capital of public debt, bearing interest at 3, 4, and 5 per cent. per annum respectively, will be redeemed by an annual fund of one per cent., applied by quarterly issues, in purchasing the said capitals at the several average prices at which the 3 per cent. funds may be redeemable, as stated underneath.

Average prices of the 3 per cent. Funds.	Periods of redeeming by a Sinking Fund of one per cent. per annum, issued by quarterly payments, a capital of Debt bearing interest.					
	At 3 per cent. per annum.		At 4 per cent. per annum.		At 5 per cent. per annum.	
	Years.	Months.	Years.	Months.	Years.	Months.
50	23	3 $\frac{1}{2}$	27	0 $\frac{1}{2}$	30	1
55	25	7	29	8 $\frac{1}{2}$	33	0 $\frac{3}{4}$
60	27	10 $\frac{1}{2}$	32	4 $\frac{1}{2}$	36	0 $\frac{1}{2}$
65	30	2 $\frac{1}{2}$	35	0 $\frac{3}{4}$	39	0 $\frac{1}{2}$
70	32	6 $\frac{1}{4}$	37	9	42	0 $\frac{1}{4}$
75	34	10	40	5 $\frac{1}{2}$	45	0 $\frac{1}{4}$
80	37	1 $\frac{1}{2}$	43	1 $\frac{1}{2}$	48	0
85	39	5 $\frac{1}{2}$	45	9 $\frac{1}{2}$	50	11 $\frac{3}{4}$
90	41	9 $\frac{1}{4}$	48	5 $\frac{3}{4}$	53	11 $\frac{1}{4}$
95	44	3 $\frac{3}{4}$	51	2	56	11 $\frac{1}{2}$
100	46	4 $\frac{1}{2}$	53	10 $\frac{1}{4}$	59	11 $\frac{1}{4}$

On the 31st of October, 1805, the sum of national debt which had been redeemed, exclusive of the sum purchased by sale of the land tax, was 101,203,940*l.* which coll in money 62,866,335*l.* 15*s.* 10*d.*

THE BANK. It has already been mentioned that the business relative to the funds is transacted at the bank of England. This establishment is, on all accounts, so important to the nation, and its transactions so closely connected with the highest interests of the country, that an account of it with some length of detail will not be improper.

ORIGIN. Many attempts were made to bring such an institution to bear, before the present bank was established. Soon after the restoration it was proposed to erect *an office of credit* for the reception of goods and merchandize; for the appraised value of which, notes were to be issued, which it was imagined the merchant would find less difficulty in negotiating than attended the borrowing of money on the goods themselves: and such a plan might be attended with considerable advantage to commerce, if commodities were to be warehoused in public repositories, a proper receipt given by an officer appointed for that purpose, and the property of goods transferred by indorsements upon such receipts. In 1678, Doctor Lewis, an eminent clergyman, published his model of a bank, with some observations on the great advantages that would accrue from it, to the crown and to the people; but who could venture in the reign of Charles II., to trust his property in any place to which the king could find access? The same circumstance prevented the establishment of a bank in 1683. By letters patent from the crown, a company had been erected, called the Royal Fishery of England, instituted for the purpose of carrying on that branch of commerce with advantage to this country, and, indeed, with the hopes of depriving the Dutch of the profits they acquired by fishing on our coasts. Upon this company, it appears, that a general bank of credit was engrafted: but though the plan was supported by persons of considerable character and property, neither the state of the government, nor the temper of the times, was calculated for such an institution; and consequently it was soon discontinued.

ESTABLISHMENT. The present bank of England was established in 1694. It was suggested by William Patterson, a Scotchman of great abilities, who was afterward one of the original directors, and the plan rendered practical by the exertions of Michael Godfrey, a gentleman of considerable influence in the city, who was appointed the first deputy governor. Nothing can more clearly prove the low state of public credit, and the great scarcity of specie at that time, than the terms which parliament found itself under the necessity of granting. For the sake of receiving 1,200,000*l.*, government agreed to pay not only interest at eight per cent., and 4000*l.* for the expence of management; but the subscribers were also erected into a corporate

rate body for the purpose of carrying on the lucrative trade of banking. It was expected, however, that the circulation of their notes, and the establishment of paper credit, would greatly facilitate the raising of supplies, and prove a general ease and accommodation to the public in all pecuniary transactions. There were in Europe, at this time, but four very considerable banks, those of Amsterdam, Venice, Genoa, and Hamburgh; of which all but that of Genoa were solely for the convenience of merchants. At Amsterdam, Venice, and Hamburgh, all bills of exchange and other large payments were usually made at their banks, which saved much trouble to merchants. There were banks in other parts of Europe, not only for the convenience of commerce, but also for the emolument of their proprietors, who had originally advanced money to the state, for which they had a perpetual fund of interest; and they obtained also the privilege of being cash-keepers for merchants and others. Such were the banks of Genoa, Naples, and Bologna; there being two such in the latter city, in one of which, though only ten per cent. was ever paid in, they were said to make a dividend on the whole nominal capital; and to lend money at one per cent. per annum, proceeding from the great sums with which they were entrusted without interest; and after this second sort of bank was the bank of England modelled.

The project was not suddenly popular; government was at that time reduced to great difficulties in raising the annual supplies, to support an expensive war against a potent foreign enemy, while the public measures were clogged and distressed by a violently disaffected faction, who alleged, that banks could thrive no where but in a republic, and yet would, at other times, argue, that such a bank as was proposed would make the king absolute. The projector found great difficulty in obtaining for his plan the sanction of the privy council, previous to its being brought into parliament; it was long debated with great pertinacity in presence of queen Mary, the king being absent in Flanders; many were of opinion that a bank would not succeed, as only eight per cent. interest was to be paid on the 1,200,000*l.* to be advanced by the proposers of this bank. The disaffected were all hostile to it, alleging that it would ingross the money, stock, and riches of the kingdom. The monied men also opposed it, lest it should diminish (as it certainly soon afterward did) their exorbitant gains from the public distresses; for even eight per cent. on the land tax, beside additional premiums, though payable within the year, did not satisfy them. Other anticipations of the public revenues were much higher, the interest, premiums, and discounts on them rising to twenty, thirty, and forty per cent. And sad it was to consider, that

contracts for things sold to government were made at forty, fifty, or even one hundred per cent. above their current value. So great was the difficulty of raising the annual supplies, that the ministry were obliged to stoop to solicit the London common council in order to borrow only one or two hundred thousand pounds at a time, on the first payments of the land-tax, as particular common-council-men did to the private inhabitants in their respective wards, going from house to house for the loan of money.

At length, the parliament having passed an act, 5, 6 William and Mary, c. 20. for granting several rates and duties on tonnage of ships, and on beer, ale, and other liquors, for securing certain recompences, &c. to such persons as should voluntarily advance 1,500,000*l.*, it was thereby enacted, that their majesties might grant a commission to take particular subscriptions for 1,200,000*l.*, part of the said 1,500,000*l.* of any persons, natives or foreigners, whom their majesties were empowered to incorporate, with a yearly allowance of 100,000*l.*, being 96,000*l.* or eight per cent. for interest, till redeemed, and 4000*l.* for charges of management; the corporation to have the name of *the Governor and Company of the Bank of England*; their fund to be redeemable, on a year's notice after the first of August, 1705, and payment of the principal; and then the corporation to cease. The company were enabled to purchase lands and other property without limitation; and to enjoy the other usual powers of corporations; and their stock to be transferable. They were not to borrow or give security under their common seal, by bill, bond, covenant, or agreement; nor owe at any one time more than 1,200,000*l.*, except by future acts of parliament, upon funds to be agreed on in parliament; and in case of their borrowing any greater sum than 1,200,000*l.* under their common seal, then every private member, and their heirs, executors, and administrators, were to be proportionably chargeable therewith, or for the repayment thereof. This corporation must not employ or trade with any of their stock, monies, or effects, in buying or selling any goods or merchandize whatever, on forfeiture of treble the value of the commodity. They might deal in bills of exchange, and in buying and selling bullion, gold, or silver, and in selling any goods or merchandize, pledged to them for money lent, and not redeemed at the time agreed on, or within three months after; and might also sell the produce of lands which they had purchased. Provided always, that all bills obligatory under the seal of the corporation might be assignable by indorsement; which should absolutely vest the property in the assignees. And that if the governor, deputy governor, directors, managers, or other members should, on the account of the corporation, purchase any

any crown lands or revenues, or advance to the crown any money by way of loan or anticipation on any branch of the revenue, other than on such branches on which a credit of loan should be granted by parliament, they should forfeit treble the value lent; and no letters of signet, privy seal, or great seal, of the crown, could pardon or remit any fine or amercement charged on this corporation, on account of any suit brought against them; but such fine must be deducted out of their annual fund. The rest of this long act relates to annuities for one, two, or three, lives, for 300,000*l.* principal money; the residue of the 1,500,000*l.* to be granted by the king.

If the adversaries of the bank had been assiduous in exciting prejudices against it, those who favoured the plan were not less industrious; they even sanctified the measure, by pressing to their service the words of holy writ, Luke xix. 23. "Wherefore, then, gavest not thou my money into the *bank*, that at my coming I might have required my own with usury?" However current such a quotation might be with the inconsiderate, other arguments were necessary to produce a more general effect; it was therefore represented, that, by the new plan, the rich might have their personal property secured from every risk, and might enjoy, at the same time, great pecuniary advantages. The landed gentleman, who formerly could not borrow four thousand pounds on an estate of one thousand pounds a-year, without additional personal security, might now, (it was said,) borrow four thousand pounds, on three hundred pounds per annum. The merchant who brought a cargo to England worth three thousand pounds, might have money to that amount at the bank, without the smallest difficulty, and might thus carry on his traffick to additional advantage: and, to sum up all in a few words, "It would render the sovereign great, the gentry rich, the farmer flourishing: our commerce would increase, our ships multiply, our seamen would never want employment; new manufactures would be set up, and the whole greatly encouraged."

The public, by such arguments as these, being impressed with a favourable idea of the measure, on the 16th June, 1694, a commission was issued under the great seal, for taking subscriptions. On the 21st of June, the commissioners attended for the first time, at *Mercers' Chapel*. Nearly 300,000*l.* were subscribed the first day, 200,000*l.* the second, and as much on the third; and before the second of July, the whole sum was made up. This event was beyond expectation; for it had been thought necessary to make provisions in the bill, on the supposition that only 600,000*l.* might be subscribed.

CHARTER. This great success secured to the company their charter,

charter, which, after the act of parliament above recited, was considered a mere form : it directs that there be a governor, deputy governor, and twenty-four directors, of whom thirteen or more shall constitute a court, the governor or deputy governor to be always one. Five hundred pounds stock to be the lowest qualification for a vote in general courts ; and no proprietor, how much soever his stock may be, to have more than one vote. The governor's qualification stock to be at least four thousand pounds ; the deputy governor's three thousand pounds ; and each director's two thousand pounds ; and all these are to be natural-born subjects, or naturalized. Lessening their qualification stock, vacates their offices, which are only annual. They take the state oaths, that of office, and another of stock qualification. Voters also in general courts take the qualification and state oaths. No dividend can be made but by consent of a general court, and only out of the interest, profit, or produce, arising by such dealing, buying, and selling, as the act of parliament allows. General courts may make bye laws, &c. agreeable to the act of parliament and the general laws of the kingdom ; impose fines on delinquents ; appoint salaries to governors, directors, &c. Stock was to be divisible by will, to be attested by three or more witnesses ; but this was altered by an act of the 8th and 9th king William, which made bank stock a personal estate, and to descend accordingly. Lastly, neither the governor, nor the deputy governor in his absence, is to have any vote, either in general courts or in courts of directors, save where there shall appear to be an equality or equal number of votes.

PROGRESS. Although by their charter and the act of parliament, the bank had power to lend money on pledges, and although they once announced by advertisement their intention to do so, they never made extensive use of that power, but contented themselves with banking only, including therein the dealing in bullion, gold, and silver, discounting bills of exchange, advancing money to the public on the credit of acts of parliament, and circulating their own sealed bills, which bore interest, (though since laid aside,) and their cash notes on demand, bearing no interest ; as also circulating exchequer bills for the government on a stated allowance.

Very soon after its establishment, the affairs of the bank were greatly embarrassed ; a land-bank which had been for a short time attempted without success, the deficient funds for the annual supplies, the bad state of the silver coin, more especially in the years 1695, and 1696, and the ill humours occasioned by these circumstances, and by disaffection to the government, had brought the infant bank of England into such difficulty and distress,

distress, that in 1697, their cash notes were at a discount of fifteen to twenty per cent. their credit being so low that they were necessitated to pay those notes by instalments of ten per cent. once in a fortnight, and, at length, to pay only three per cent. once in three months. This distress was in a great degree occasioned by the bank having taken the clipped and diminished silver money, at the legal or par value by tale, and guineas at thirty shillings, for which they issued their notes payable on demand, and not having received from the mint, a sufficient quantity of the new silver coins, to answer the daily demands on them for their outstanding notes. The directors were thereupon obliged to make two different calls, of twenty per cent. each, on their members in the year 1696, and to issue bank sealed bills, at six per cent. interest, in exchange for bank cash notes; and to advertise, for the conveniency of trade, whilst the silver was recoinage, that any person might keep an account with the bank, and transfer any sum under five pounds, from his own to another man's account; which was getting into the method of the bank of Amsterdam; yet, such was the distress of the times, that, on the 6th of May, 1697, the bank advertised in the Gazette for the defaulters of the last call of twenty per cent., which ought to have been paid by the 10th of November, 1696, and also those indebted to the bank on mortgages, pawns, notes, bills, or other securities, to pay in the said twenty per cent., and the principal and interest of those securities by the first of June next. Even so late as June, 1697, bank notes were at a discount of thirteen and fourteen per cent. A committee of the House of Commons had been appointed to inspect their books, and to examine certain accounts with regard to their situation which they had given into the house, and the report of this committee contained several curious particulars. It appeared that 893,800*l.* were issued in sealed bank bills, which bore an interest of six per cent.; 68,669*l.* in specie notes, on which, when exceeding twenty pounds, was paid an interest at the same rate: and that the notes bearing no interest amounted to 695,527*l.*, but they were at a very great discount. It farther appears, that a balance of 300,000*l.* was due to the states of Holland for money advanced by them, and as this debt is called balance, it must have been originally more considerable. It is uncertain, whether this sum was borrowed by the bank in order to carry on the original purposes of its establishment, or arose from the credit which the company gave to the king, to enable him to procure money on the continent for prosecuting the war. Only 42,160*l.* were issued on private loans and mortgages. In consequence of this enquiry, and in order to clear the market of part of a load then so much in disrepute;

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not without hopes also, by such means, of restoring the credit of the nation, then at the lowest ebb; an act was passed for enlarging the capital of the bank of England by ingrafting on its stock new subscriptions, four-fifths of which were to consist in exchequer tallies, and the remaining fifth in bank notes; and government agreed to allow interest, at the rate of eight per cent., on such tallies till they were paid off. The term which had been granted to the bank was also prolonged to the first of August, 1710; and during the continuance of the corporation, *no other bank or fellowship of that nature was to be erected, suffered, or countenanced, by act of parliament.* It was expected that 3,600,000*l.* would have been ingrafted; instead of which, the subscriptions amounted only to 1,001,171*l.* 10*s.* But even this operation, though on a smaller scale, was attended with considerable advantage; for about 200,000*l.* in bank notes, and 800,000*l.* in tallies, being thus sunk by the new subscriptions, the credit both of the bank and of the public began to revive. Notes without interest came to be on a par with specie; money began to circulate on moderate terms; and the exchange with the continent, from being very unfavourable, was soon brought to an equality. Thus the exclusive right of banking as a corporation was first acquired by the company, and its capital stock was thus increased to the sum of 2,201,171*l.* 10*s.* But so productive was the fund upon which the ingrafted tallies were placed, that they were all paid off in the course of a few years; and though the capital stock on which the proprietors divided, remained at the above sum, the money due by government was reduced to 1,200,000*l.* before the next prolongation.

From this period the charter of the bank has been frequently renewed or prolonged, and on different terms. In 1708, they advanced to government 400,000*l.* at six per cent., and received a prolongation of their privilege till August, 1732; in 1713, they purchased an additional term of ten years, by agreeing to circulate exchequer bills to the amount of 1,200,000*l.* for which they were to receive three per cent. per annum, and a further yearly sum of 8000*l.* payable quarterly, under the denomination of premiums for the expence of circulation, in addition to an interest of two pence per cent. a-day, payable to the bearer. In 1742, their expiring charter was extended for the further term of twenty-two years, in consideration of which, they advanced to government 1,600,000*l.* without interest; that is, they added that sum to their former debt of the same amount, both paying only three per cent., instead of six. At the time this bargain was made, the nation was involved in war, and therefore it is supposed the bank obtained favourable terms; but in 1763, the price of a renewal for twenty-one years was less

less moderate: the company agreed to pay '1,110,000*l.* to be disposed of by parliament, without allowance of interest, or repayment of principal; and to circulate a million in exchequer bills, undemandable for two years, at only three per cent. interest, though exchequer bills bearing four per cent. were then at a discount. In 1781, the charter was again prolonged by the addition of twenty-seven years to the former term, or till August, 1812; for this indulgence, the government received as an advantage, the circulation of two millions of exchequer bills not to be demanded for two years, and bearing no greater interest than three per cent. The last prolongation was confirmed by an act passed in 1800. Though the charter of the bank had several years to run, yet it was thought expedient to renew it at so early a period, with a view of strengthening the credit of the bank, and enabling it to give every possible assistance to government. The bank became bound to advance three millions for the service of the year 1800, on exchequer bills, payable without interest, out of the supplies to be granted for the year 1806, in consideration of which, the term of their charter was continued till the end of twelve months notice, after the first of August, 1833.

UTILITY OF THE BANK. The benefits derived by the public from the existence of the bank, are not however to be considered as limited to the receipt of the monies already mentioned; the taking up of exchequer bills and other government securities, when the market was overstocked, was a service of considerable importance, and, on great occasions, the bank has, by its capital and credit, opposed an effectual barrier against the fears and alarms which would have proved most ruinous to the nation. Thus in 1722, when the failure of the South Sea scheme had produced such dangerous effects on public credit, the bank contributed to allay the general inquietude, by purchasing four millions of the South Sea capital; and their aid and subscription have ever been ready in forwarding, so far as was proper, all public spirited and patriotic undertakings.

ITS DISASTERS. Nor has the prosperity of the bank been without some interruption, though the foundation of its credit has ever been unimpaired. The disasters attending the first years of its establishment have been mentioned. In November, 1700, the general terror occasioned by the claim which Lewis XIV., advanced to the crown of Spain in favour of his grandson, materially affected, for a time, the credit of the bank; and in 1704, the value of all securities was so much reduced, that they were again obliged to issue, to a large amount, sealed notes bearing interest. In 1708, the fear of an invasion of Scotland in support of the Pretender, occasioned what is called a *run* on the
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the bank, but the credit of the corporation being now considered inseparably connected with that of the exchequer, the lord treasurer, Godolphin, signified to the directors, that the queen would, for six months, allow an interest of six per cent. on their sealed bills, which, till then, bore only three per cent. Moreover, his lordship, and the dukes of Marlborough, Newcastle, and Somers, and sundry other lords, offered to advance to the bank considerable sums of money: by which encouragement, and their making a call of twenty per cent. on their capital, the bank was enabled to weather that storm, and to preserve its credit. In 1711, the change of the ministry occasioned a similar run, but its bad effects were parried by the address and contrivance of the minister, in diverting the public attention to other objects. The apprehension of queen Anne's death, in 1714, occasioned again a depreciation of national securities, and a run on the bank, but the alarm speedily subsided, and the confidence of the country was restored; but in 1745, the crisis was more menacing. In that year, in consequence of the alarm raised in the metropolis by the progress of the Pretender's son, there was a great run on the bank in the month of September. The directors, to make their cash hold out as long as possible, paid in silver, and chiefly in sixpences; an expedient which could not have availed them long. An infinitely more effectual, as well as more honourable relief, was administered by a meeting of merchants, bankers, and traders, on the 26th of that month, when those gentlemen drew up a paper, declaring their resolution to support the credit of the bank by receiving their notes in all payments, and using their utmost endeavours to pay them away to all persons receiving monies from them. The resolution was soon signed by above eleven hundred individuals, and had the happy effect of quieting apprehension, restoring confidence, and putting an immediate end to the run upon the bank. From this period for fifty years, the bank continued to enjoy uninterrupted success and unlimited confidence; but in 1795, they found it necessary, from the nature of circumstances in the commercial world, to publish a resolution for limiting their accommodations by discount, though in fact, it is said, they did not, in the ensuing year, discount to a smaller amount than in that which preceded.

All these were however of inconsiderable importance compared with the great stoppage which occurred in 1797, an event which demonstrated, that, even in a commercial country, anxiously alive to its pecuniary interests, it is easy for a strong and popular administration to quiet apprehension, and restore confidence, amid circumstances the most unpromising, by the use
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of temperate exertions enforced by convincing arguments, and supported by facts.

The great and continued drains of bullion, in consequence of the enormously expensive operations of the war, the loans to the emperor of Germany, and other subsidies to foreign princes, and also the large sums payable for cargoes and freights of neutral ships taken, which the foreign owners required to be paid in bullion, had raised the price of gold (8th of October, 1795,) to four guineas per ounce: and our gold coin being only 3*l*. 17*s*. 10½*d*. per ounce, it was evident that the current money of this country, consisting almost wholly of gold, would be carried abroad to a very alarming amount. Even since December 1794, the directors had repeatedly expressed to the chancellor of the exchequer, their uneasiness on account of the magnitude of the sums drawn from the bank for the service of government, and anxiously required payment, or at least a considerable reduction of the debt. They even resolved to limit their advances on treasury bills to the sum of 500,000*l*.; and requested Mr. Pitt to make his arrangements so as not to have occasion to draw on them for any sum beyond that limitation. And at last they acquainted him (30th of July, 1795,) that they were determined to give orders to their cashiers to refuse payment of any treasury bills, which would carry the advance beyond that amount. Nevertheless the chancellor of the exchequer obtained further advances from them, which were granted with extreme reluctance on their part, on his pressing solicitations, and statements that serious embarrassments would arise to the public service if refused.

It would be tedious to enumerate all the applications of the governors of the bank to the prime minister, urging a speedy diminution of the debt, and deprecating further demands; suffice it to say, that on the 10th of February, 1797, the government was indebted to the bank, according to a statement delivered to Mr. Pitt, as follows:

		£.
Arrears of advance on land and malt-taxes, 1794		337,000
ditto ditto 1795		491,000
ditto ditto 1796		2,392,000
Exchequer bills on vote of credit - - -		968,800
on consolidated fund, 1796		1,323,000
Treasury bills paid at the bank - - -		1,674,645
		<hr/>
		7,186,445
Besides arrears of interest due, &c. -		400,000

£. 7,586,445
The

The directors of the bank represented to the minister, that, if the loan of £5,000,000. to be raised in this country for Ireland, which was then in contemplation, should proceed, the greatest part of it must be remitted in hard cash, which would bring ruin on the bank, and probably compel them to shut their doors; that, at any rate, they must diminish their advances to the treasury, and lessen the customary accommodation to the merchants in the way of discount.

About this time there was much talk of an invasion from France: and it was supposed that many people in all parts of the country were desirous of securing as much as possible of their property in gold coin in their own possession. Certain it is, that very heavy demands were made on the country banks, and that two in Newcastle were obliged to stop paying in cash. The country banks were thereupon obliged to make large demands for money on the bankers in London, who were their correspondents, which consequently compelled them to drain very large sums in cash from the bank. This run had been progressively increasing; but particularly in the week beginning with Monday the 20th of February, it exceeded that of any foregoing week; and the demands on the Friday, and Saturday, were larger than the four preceding days taken together.

On Friday (24th) the committee of the whole court of directors, alarmed at the rapid diminution of the cash in their coffers, desired the deputy-governor, and Mr. Bosanquet, to wait on Mr. Pitt, to represent to him the dreadful drain of their specie, and to ask him, how far he thought the bank might go on paying cash, and when he would think it necessary to interfere, before their money was so reduced, as might be detrimental to the immediate service of the state?

In this crisis, the king was requested to come to town to assist at a meeting of the privy council; and on Sunday (26th) a council was accordingly held at St. James's, the result of which, and of another meeting immediately after it in Downing Street, between the members of the administration, and the governor, deputy-governor, Mr. Thornton, Mr. Bosanquet, and other directors of the bank, after a warm conference, was, an order of privy council declaring it indispensably necessary for the public service, that the directors of the bank of England should forbear issuing any cash in payment, until the sense of parliament could be taken on that subject, and the proper measures adopted for maintaining the means of circulation, and supporting the public and commercial credit of the kingdom.

The governors and directors immediately published the order

der of council, with an advertisement of their own, declaring that their general concerns were in an affluent and flourishing situation, and that they should continue their usual discount for the accommodation of the commercial interest, paying the amount in bank notes; and the dividend warrants would be paid in the same manner. The actual arrival of an event, which, by all persons who had ever contemplated a probability of its happening, had been dreaded as the death-blow to the commercial prosperity of the country, produced a considerable alarm, but it was far short of what might have been expected. The principal merchants and bankers immediately met at the Mansion House, the Lord Mayor presiding, and unanimously adopted and subscribed a resolution that they would not refuse to receive bank notes for any sum of money to be paid to them; and would use the utmost endeavours to make all their payments in the same manner. In a few days, this resolution was subscribed by above three thousand principal merchants, bankers, and traders; on the 28th of February a paper, nearly similar, was signed and published by the lords of the privy council; and immediately transactions of every kind went on, as if nothing had happened. A number of papers tending to account for the scarcity of money were presented to parliament, from which, and the investigation to which they gave rise, it fully appeared, that the affairs of the bank were, by no means, in a situation to give any real cause of alarm to their creditors, and that the company were fully able to make good all demands of every kind. It was made evident, that, after deducting all claims against them, they had a clear balance of property to the amount of 15,513,690*l.* and consequently, as so large a capital could not be forced into cash without great loss, it was the interest of all proprietors, as well as of all who regarded the welfare of the country, to unite in support of the establishment by which alone it could be rendered valuable.

ISSUE OF SMALL NOTES AND DOLLARS. In a few days after the stoppage of issuing cash from the bank, the directors began to issue notes for one pound and two pounds, which have continued ever since in general currency. As a further substitute for British coinage they circulated Spanish dollars, with a miniature impression of his Britannic Majesty's head stamped upon them, at four shillings and nine-pence. They continued in circulation till the 31st of October, 1797, during which time a great many dollars had been issued by unprincipled individuals with counterfeited stamps. The King's head on the dollar was so very small, not larger in circumference than a pear of moderate size, that to counterfeit it was a very easy operation.

operation. Tools for the purpose made of steel, imparted the figure to silver by means of a smart stroke with a hammer, and as the piece of silver afforded a handsome profit, the fraud was carried on to a great extent. The bank, when this sort of specie was called in, finding that much contention and much misery to poor persons would ensue from rejecting the spurious coinage received as genuine all that was produced to them, and submitted to the loss.

OTHER DOLLARS AND TOKENS. In 1804, the current silver coin having been much reduced in value, a miserable spurious trash introduced, and even of that a great portion withdrawn from circulation, the bank again issued a number of Spanish dollars at five shillings each, which were afterward raised to five shillings and six-pence. In this emission, they totally changed the appearance of the coin; all traces of the Spanish monarch and his arms being struck out, and the King's head on one side, and some words on the reverse being produced at one blow by force of a steam engine. Other tokens were afterward issued at three shillings and eighteen pence each; but government having, in 1816, sent forth a copious supply of silver coin from the mint, these tokens have also been called in. Notwithstanding the pains which were taken to prevent these tokens from being easily counterfeited, they were no sooner issued than the hand of fraud was in full activity. Spurious dollars and tokens were issued in base metal, and some even in silver, when the price of bullion declined; in vain were strong statutes passed denouncing capital penalties, transportation and imprisonment against those who made, uttered, or unlawfully possessed these deceptive fabrications; they were supplied by the guilty makers at so low a price as to form an irresistible temptation to poverty or avarice, and innumerable prosecutions and convictions were not found to deter new adventurers from engaging in this wicked traffic.

BANK INDEMNITY AND RESTRICTION. Government aided the useful efforts of the bank by statutes indemnifying the governors as to all acts which might be irregular. On the third of May an act was passed reciting a minute of the company forbidding the issue of cash in payments, and legalizing and continuing that restriction for a limited time, and they were indemnified as to suits that might be brought against them for refusing to give cash for their notes. These restrictions have been by subsequent acts continued with little variation to the present time. By these wise and provident measures, all the apprehensions that were entertained have vanished; the credit of the bank is as high, both at home and abroad, as it ever was; and not the slightest inconvenience is or has been experienced from its not paying in cash.

BANK STOCK AND DIVIDENDS. In the preceding account mention has been made of monies advanced by the bank to government, the following table exhibits a general view of the progress of the capital and dividends of the Bank of England, from its establishment to the present time.

	Year.	Capital.			Dividend.
		£.	s.	d.	
	1694, -	1,200,000	0	0	8 per cent.
	1697, -	2,201,171	10	0	9 per cent.
	1708, -	4,402,343	0	0	9 per cent.
	1709, -	5,058,547	1	9	} varying from 9 to 6 per cent.
	1710, -	5,559,995	14	8	
	1722, -	8,959,995	14	0	
25th March -	1730, -	-	-	-	6 per cent.
29th September	1730, -	-	-	-	5½ per cent.
25th March -	1731, -	-	-	-	6 per cent.
29th September	1731, -	-	-	-	5½ per cent.
25th March -	1732, -	-	-	-	6 per cent.
29th September	1732, -	-	-	-	5½ per cent.
	1742, -	9,800,000	0	0	5½ per cent.
29th September	1742, -	-	-	-	5½ per cent.
	1746, -	10,780,000	0	0	5 per cent.
25th March -	1747, -	-	-	-	5 per cent.
5th April -	1753, -	-	-	-	4½ per cent.
10th October	1764, -	-	-	-	5 per cent.
10th October	1767, -	-	-	-	5½ per cent.
10th October	1781, -	-	-	-	6 per cent.
	1782, -	11,642,400	0	0	6 per cent.
5th April -	1788, -	-	-	-	7 per cent.

Consequently the present capital on which the bank divides, amounts to 11,642,400*l.*, which at an interest of 7 per cent. is 814,968*l.* per annum. But this is not the exact sum due by the public to the company, and far less is the dividend above mentioned the sum annually paid by the bank to its proprietors. The sums which the bank has lent on permanent securities, no portion of which the public is under any necessity of repaying, until its privileges expire, amount to 11,686,800*l.*, being 44,400*l.* more than that on which the bank pays its dividends. The interest paid by the public is but 352,502*l.* 3*s.* 6*d.*; whereas the bank, in consequence of the profits of its business, is able to make a regular annual dividend, besides occasional ones, at the rate of 814,968*l.* per annum, or 462,465*l.* 16*s.* 6*d.* more than it receives. In addition to the above interest, the sum of 5,898*l.* 3*s.* 5*d.* is annually allowed for the charges of management; of which 4,000*l.* were given at the original establishment of the bank, and the remainder in 1722, when four millions were purchased from the South Sea company.

Besides these regular dividends, the bank has occasionally given to the proprietors of stock, extraordinary allowances under the name of bonuses; amounting in all to upwards of two millions. The capital stock of the bank is exempted from taxes; accounted a personal estate, assignable over and not subject to forfeiture. The dividends are paid at Ladyday and Michaelmas, old style.

BUSINESS OF THE BANK. The bank is to be considered as uniting three distinct classes of transactions; it is a place of deposit for monies, issuing its notes in return; it is an office for discounting the bills of merchants, bankers, and private tradesmen; and since the year 1747, the management of government securities has been transferred from the exchequer to the bank. The profit on the two former branches of commerce is uncertain, depending on prudence and fortune, but its average must be very considerable; the allowance on the management of government securities is 45*l.* per million of stock, or tenpence and four fifths of a penny per cent., in consideration of which government is freed from every charge for accountants, clerks, books, and the numerous other particulars requisite in the management of so great a concern as the national debt. From this management an indirect profit arose to the bank from sums which were left in their hands through mistake or indolence, and were called *unclaimed dividends*. In 1791, these dividends had accumulated to 660,000*l.*; and on the principle that a sum which the creditor neglects to call for, must remain with the debtor, and not with his agent or banker, Mr. Pitt proposed, that 500,000*l.* of that dormant money should be applied to the public service. The motion was opposed by the directors of the bank, as dangerous to public credit; and the matter was compromised by the nation accepting that sum as a loan from the bank without interest, on condition that a balance of the public money not less than 600,000*l.* (reckoning this loan of 500,000*l.* as part of it) should at all times remain in the hands of the bank, and that the annual allowance to the bank for the management of the public debt should continue at the accustomed rate of 45*l.* per million. Besides this profit, government pays to the bank, for receiving subscriptions on loans 20*l.* 15*s.* 10*d.* per million, and for making out, issuing, and paying the tickets in each lottery 1000*l.*

BANK NOTES. Mention has already been made of the first notes issued from the bank, but interest on them has long been discontinued. Until 1759, twenty pounds was the amount of the smallest: in that year notes for fifteen pounds, and ten pounds began to be circulated; in 1793 those of five pounds

pounds were given, and in 1797, the bank gave notes of two and one pounds. All these notes are printed on a transparent but strong paper; the composition of which is so contrived as to exhibit in all parts a wavy appearance, each piece is surrounded with flourishes, and at the bottom, in Roman capital letters are the words "Bank of England." These characteristics cannot be discerned unless the note is held between the eye and the light. The more visible part consists of an engraved promise to pay to the principal cashier of the bank by name, or bearer, the given sum, which is again inserted in the lower corner on the left of the note, in white letters on a black ground. The notes are numbered progressively, the date of their being issued twice inserted, and the names of one clerk who promises to pay the money in the name of governor and company, and of another who attests the entry in the book, are subscribed; the numbers, dates, and signatures are in course written, the name of the general payee is engraved, but in a character more like an ordinary hand writing than the residue of the note. Besides these notes there are bank post bills, which differ principally in being made payable to some other person than the chief cashier of the bank, or order, and incapable of circulation without an indorsement. Considerable gains must undoubtedly accrue to the bank from the issue of their paper, not only by the use of money left with them at interest, while their notes bear none, but by the frequent, and almost continual loss of bank notes as well through carelessness as fire and other accidents. Yet the bank occasionally suffers by paying undetected forgeries, and the expence of preparing, filling up, signing, and entering the notes is so far considerable, that after some time the company issued again those for one pound and two pounds which came to them after having been in circulation: their general practice is not to reissue, but cancel all notes returning to them. The amount of bank notes in circulation in February 1797, was 8,640,250*l.*; in November 1803, it had increased to 17,931,930*l.*; but the property of the bank is more than adequate to a much larger issue for the purpose of extending discounts and facilitating commerce; and perhaps the reproach against them is not ill founded, that frequently they have had cash and bullion hoarded up, nearly equal in amount to all their notes in circulation.

LAWS PECULIARLY RELATING TO THE BANK. Independently of the statutes made for the establishment and internal regulation of this great national concern, there are several laws for restraining offences by which their property or credit might be endangered. By 15th Geo. II. c. 13. any officer or servant of the governor and company, who embezzles, secretes, or runs

away with any note, bill, dividend-warrant, bond, deed, or other security; money or other effects belonging to the said company, or belonging to any other person and deposited with the governor and company, or with him as their officer or servant, shall be deemed guilty of felony without benefit of clergy. By the same statute any person forging the seal of the bank, or forging or altering bank notes, or tendering such forged or altered notes in payment, or demanding to have them exchanged, or forging the name of any cashier of the bank, is guilty in the same degree. By 13th Geo. III. c. 79. Persons not authorized by the bank, making or using moulds for the making of paper with the words *Bank of England*, visible in the substance, or having such moulds in their possession, are guilty of felony without benefit of clergy: and persons issuing notes and bills engraved to resemble those of the bank, or having the sum expressed in white characters on a black ground, may be punished by imprisonment, not exceeding six months; but innocent persons possessed of such notes carrying them for payment are not affected. By a late statute 41st Geo. III. c. 39. the penalties of this act are extended to persons who have in their possession any paper made from such moulds, or resembling that whereon the notes of the Bank of England are generally printed. It is also to be observed that persons dealing in, or being proprietors of bank stock are not by that dealing within the statutes respecting bankrupts, and such stock is not only exempt from tax, but protected against attachments.

BUILDINGS AND OFFICES. The business of this corporation was originally transacted at Grocers' Hall in the Poultry. In 1732 the first stone of the present building was laid, on the site of the house and garden of Sir John Houblon, the first governor; it then only comprised what now forms the centre, with the court yard, the hall, and the bullion court. The east wing was added in 1770; and the western wing, with the Lothbury front, were begun in 1789. The building is a stone edifice, situated a little to the north of Cornhill. The front is composed of a centre, eighty feet in length, of the Ionic order, on a rustic base; and two wings, ornamented with a colonnade. The back of the building, which is in Lothbury, is a high and heavy wall of stone, with a gateway for carriages into the bullion court. The principal entrance into the bank is from Threadneedle Street. The wings were designed by Sir Robert Taylor, and for the purpose of erecting them, several houses were taken down, and the church of St. Christopher le Stocks, to the great injury and disturbance of the ashes and memorials of the dead. On the east side of the great entrance is a passage leading to a spacious apartment, called the rotunda, where the
stock

stock brokers, and other persons, meet for the purposes of transacting business in the public funds. Branching out of the rotunda are the various offices appropriated to the management of each particular stock; in all these offices, under the several letters of the alphabet, are arranged the books in which the amount of every individual's interest in such a fund is registered. The rotunda is a great scene of pecuniary negotiation, and the clamour is sometimes so excessive, that the beadle or porter of the bank is obliged to obtain silence in the following manner. Dressed in his robe of office, a scarlet gown and gold laced hat, he mounts a kind of pulpit, holding in one hand a silver headed staff; in the other he has a common watchman's rattle, which he exercises over the heads of the crowd, with a clattering noise that overpowers the stoutest lungs, and he does not desist from enforcing this streperous kind of admonition till it produces the desired effect. The rotunda has a large dome, which admits light through the cupola, and has in the centre a wind dial. Beside the rotunda, and the various stock offices, there are other apartments of the bank deserving of notice. The hall in which bank notes are issued and exchanged, is a noble room, seventy nine feet by forty, and contains a marble statue of William III. the founder of the bank; an admired piece of sculpture, the production of Cheere. The vast and increasing business carried on in this edifice requires the perpetual aid of the architect in making additions and alterations.

OFFICERS. The bank is under the management of a governor, and twenty-four directors, none of whom must be directors of the East India Company. They are chosen by the owners of bank stock, annually, the first whole week in April. Formerly no court of directors could be held unless the governor or deputy governor was present, but this inconvenient regulation has been superseded; their qualifications in stock have already been specified. It were needless to detail the other persons employed, as their occupations are expressed by the names of their offices; they are estimated at seven hundred, besides beadles, porters, and menial servants.

COIN. Connected with the subject of revenue in general that of the national coinage claims attention in this place. "The money or coin of a country," Lord Liverpool observes, "is the standard measure, by which the value of things, bought and sold, is regulated and ascertained; and is itself, at the same time, the value or equivalent for which goods are exchanged, and in which contracts are generally made payable. In this last respect, money, as a measure, differs from all others; and to the combination of the two qualities

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“ before defined, which constitute the essence of money, the
 “ principal difficulties, that attend it, in speculation and prac-
 “ tice, both as a measure and an equivalent, are to be ascribed.
 “ These two qualities can never be brought perfectly to unite
 “ and agree; for if money were a measure alone, and made
 “ like all other measures of a material of little or no value, it
 “ would not answer the purpose of an equivalent. And if it
 “ is made, in order to answer the purpose of an equivalent, of
 “ a material value, subject to frequent variations, according to
 “ the price at which such material sells at the market, it fails
 “ on that account in the quality, or standard, or measure, and
 “ will not continue to be perfectly uniform and at all times
 “ the same. In all civilized nations money has been made
 “ either of gold, or silver, or copper, frequently of all three,
 “ and sometimes of a metal composed of silver and copper in
 “ certain proportions, commonly called billon. It has been
 “ found by long experience, and by the concurrent opinion of
 “ civilized nations in all ages, that these metals, and particu-
 “ larly gold and silver, are the fittest materials of which money
 “ can be made. Gold and silver are perfectly homogeneous
 “ in themselves, for no physical difference can be found in any
 “ pound of pure gold, or of pure silver, whether the production
 “ of Europe, Asia, Africa, or America. They are divisible with
 “ the greatest accuracy into exact proportions or parts. From
 “ their value they are not too bulky for the common purposes
 “ of exchange, and in all these respects they serve better than
 “ any other material, as an equivalent. And, lastly, they are
 “ less consumable or subject to decay, than most other com-
 “ modities. Certain portions of these metals, with an impres-
 “ sion struck upon them, by order of the sovereign, as a
 “ guarantee of their purity and weight, serve as coin.”

THE KING'S PREROGATIVE. The coins of every kingdom
 or state are the measure of property and commerce within every
 such kingdom or state, according to the nominal value declared
 and authorized by the sovereign. So far as they are made legal
 tender in exchanges with foreign countries, and in payments
 made to them, the intrinsic value of the metal of which the
 coin is made, is the only measure of property and commerce;
 because the authority of sovereigns cannot extend to regulate
 payments made in foreign countries, where they have no power
 or jurisdiction. There is no doubt, that the sovereigns of most
 of the kingdoms and states of Europe have enjoyed and exer-
 cised, from time immemorial, the right of declaring at what
 rate or value the coins of every denomination, permitted to be
 current in their respective dominions, shall pass and become, in
 that respect, lawful coins, or legal tender. In this kingdom,

the sovereigns have always enjoyed and exercised this right. Sir Mathew Hale reckons it *inter Jura Majeſtatis*, and ſays, it is an unqueſtionable prerogative of the crown. This prerogative was ſometimes invaded by powerful barons, who ſtamped monies of their own; but this practice was ſuppreſſed in the days of Henry II. In times leſs ancient, kings have occaſionally conferred the right of making money on eccleſiaſtical corporations, but they did not grant the power of inſtituting either the alloy, the denomination, or the ſtamp; the dies were uſually iſſued by the treaſurer and barons of the exchequer, by the king's command under his great ſeal; and the maſters or chief officers employed in theſe mints, were ſworn to the king for the juſt execution of their truſts. The prerogative of ſetting a rate or nominal value on current coins is exerciſed either by a clauſe inſerted in the mint indentures, or by proclamation; and it ſeems to be the better, though not the uncontroverted opinion, that the king may, by virtue of his prerogative, legitimate or make current baſe coin, or ſuch as is below the ſtandard of ſterling. He may alſo raiſe any coin already in currency to a higher denomination or extrinſic value; decry any money already current, that is, either reject it wholly out of circulation, or make it paſs at a leſs rate or value, than that at which it has hitherto been received, and make foreign coin current at a determined rate or value, and this by a proclamation alone; but, ſays Lord Liverpool, although this high prerogative is unqueſtionable, it is certainly adviſable, that in the exerciſe of it, whenever any great change is intended to be made, the king ſhould avail himſelf of the wiſdom and ſupport of his parliament.

DEBASEMENT OF COIN. There are three ways of debaſing the current coin; firſt, by diminiſhing the quantity or weight of the metal of a certain ſtandard, of which any coin of a given denomination is made. Secondly, by raiſing the nominal value of coins of a given weight, and made of a metal of a certain ſtandard; that is, by making them current, or legal tender, at a higher rate than that at which they paſſed before. Thirdly, by lowering the ſtandard or fineneſs of the metal, of which coins of a given weight and denomination are made; that is, by diminiſhing the quantity of pure metal, and proportionally increaſing that of alloy. Each of theſe modes has been practiſed at different times by the monarchs of this country before the revolution, and debaſement of coin has already been mentioned as one of the extraordinary ſources from which they endeavoured to draw emolument; the hiſtory of each ſpecific act would be too long for this work.

STANDARD. The weight by which gold and ſilver are eſtimated

mated in this realm is the pound troy; in ancient times, there was a weight used at the mint said to be derived from the Saxons, called the Tower pound, or moneyer's pound; lighter than the pound troy, by three quarters of an ounce; but this weight has been discontinued since the eighteenth year of Henry VIII. The standard of silver was anciently eleven ounces two penny-weights fine, and eighteen penny-weights alloy; and this is now, and since the reign of Edward I. always has been, the standard of English silver coin, except during a short period, when Henry VIII. reduced it, in the thirty-fourth year of his reign, to ten ounces fine and two ounces alloy; a mischief which was remedied in the second year of Queen Elizabeth. Gold was anciently twenty carats three grains and a half fine, to half a grain of alloy, till the eighteenth of Henry VIII., when a new standard was introduced of twenty-two carats fine to two alloy; both standards were used till the fifteenth Charles II., but since that time, the new one alone has prevailed, and by a proclamation in 1732, coins of the old standard were forbidden to be any longer current.

SILVER COIN. Silver money has, in point of antiquity, precedence over every other. The coins made in this realm before the conquest are little known, except to antiquaries, and even among them, subjects of much dispute; but William certainly instituted a coinage of silver, in which the denomination pound was used to express so much in actual weight, and the coin, called a penny, weighed twenty four grains, or the twentieth part of an ounce. Henry I. introduced half-pennies and farthings, both of silver, and having their just relative proportion to the penny and the pound. These continued to be the sole denominations of coin, till Edward I. introduced groats, which had the inconvenience of being uncertain in value; for groat, though now ordinarily taken to signify four-pence, has, in fact, no precise meaning, and those made by Edward I. weighed from ninety-four, to one hundred and thirty-nine grains, which as the weight of the penny was then reduced to twenty three grains and a half, equalled four-pence, in the smaller, or almost sixpence in the greater size. Henry VIII., in the course of his reign coined all the before-mentioned pieces, besides crowns, and testons, which are called shillings, but as he adulterated the metal, sometimes by introducing one half, sometimes two thirds of alloy, the value of these pieces is uncertain. For the same reason, the crowns and half crowns, shillings, six-pences, three-pences, and rose-pennies in the next two reigns cannot be relied on, since the example of Henry VIII., continued to prevail, until adulteration was carried to the extent of three fourths alloy. Queen Elizabeth, restoring
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the ancient standard, gave to shillings and six-pences nearly their present value; for in her time the coin retaining old denominations had been so much reduced in weight, that a pound of silver was represented by three pounds in money, of sterling fineness. In this reign various pieces were coined besides shillings and six-pences, which all had reference to nearly the same proportionate value between a pound weight, and a nominal pound in money; these were groats, half groats, three-pences, three-half-penny pieces, three-farthing pieces, crowns and half-crowns; portcullis crowns or dollars, which weighed seventeen penny weights eleven grains; half dollars, quarter dollars and rials or testers; some of these pieces fell into disuse; and in the reign of James I. two-pences, pence, and half-pence were coined in silver; to which Charles I. added ten-shilling and twenty-shilling pieces, and many obdional monies coined in different places, and at various periods of the civil war. Of all these pieces there now remain in circulation only crowns, half-crowns, shillings, and six-pences; four-penny, three-penny, and penny pieces in silver being occasionally produced, but rarely used as coins. During scarcities of silver, Spanish dollars have twice been brought into circulation, but, although marked with the king's head, they cannot properly be considered as coins, but as tokens.

GOLD COIN. It was generally believed till the year 1732, that Edward III. was the first of the English kings who issued from their mints any gold coins: but, by a manuscript preserved in the archives of the city of London, it was then discovered, that Henry III., in the latter part of his reign, that is, in his forty-first year, made what was called a penny of fine gold, weighing two sterlings, or the one hundred and twentieth part of the Tower pound; which gold penny was to pass for twenty sterlings or silver pennies in tale. This information has been indisputably confirmed, but it is probable that these coins were not in general circulation. Foreign gold coins must have been introduced before that time, and received in payment according to their value in proportion to silver; frequent mention is made of byzants of gold, so called from those struck by the Greek emperors at Constantinople; and of florins, so denominated from their being first coined at Florence. These florins furnished the models on which Edward III. in the eighteenth year of his reign made coin of the same denomination, weighing four penny weights nineteen grains, or the fiftieth part of a Tower pound of gold; they passed for six shillings, and were intrinsically worth about nineteen shillings of our present money; he also coined half and quarter florins; nobles at six shillings and eight-pence each, and half and quarter nobles. The

florins were estimated at rather more than twelve times and a half the value of silver of equal weight ; but this being considered as exceeding the just proportion, they were only to be taken by consent, and the other coins, issued at little more than eleven to one, served as a new currency when the florins and the fractions of them were returned to the mint. The nobles and their fractions continued at the same nominal and nearly the same intrinsic value, till Edward IV. made some which passed for eight shillings and four-pence, and subsequently others weighing only five penny-weights eight grains which were current at ten shillings ; and had also the name of rials, and were divided into halves and quarters ; he also made a coin called an angel, weighing three penny-weights thirteen grains and a half, which took the place of the old noble, being circulated at six shillings and eight-pence, and its diminutive called an angellet, or half angel. In the reign of Henry VII., sovereigns and half sovereigns were coined at twenty shillings and ten shillings ; these were enhanced by Henry VIII., to twenty two shillings and six-pence, and the half sovereign was also called a rial ; pieces called angels were in value seven shillings and six-pence, and the George noble brought that coin to its ancient rate of six shillings and eight-pence. Henry also, after the establishment of the new standard, coined crowns at five shillings, and half crowns ; in succeeding reigns, as silver bore a smaller relative value to gold, the sovereign advanced to thirty shillings, and the angel to ten shillings. Elizabeth gave the name of noble to a coin worth fifteen shillings and of double noble to one of thirty shillings, sinking the sovereign to twenty shillings. James I. continued it at the same value, and gave it the name of unites ; he issued also double crowns at ten shillings, and Britain crowns at five shillings : he raised the unites to twenty two shillings, without increasing the weight, but afterwards decreased the weight and reduced the value to twenty shillings, giving them the additional name of laurels ; he also coined rose rials of thirty shillings, spur rials of fifteen shillings, double crowns at eleven shillings, Britain crowns at five shillings and six-pence, and thistle crowns at four shillings and four-pence three farthings. Charles I. issued in the time of the civil war, several gold as well as silver coins. In the time of the interregnum the twenty shilling coins were called broad pieces, and Cromwell coined some of fifty shillings. Charles II. had a coinage called guineas, at twenty shillings each, their weight being five penny-weights nine grains and a half, with half guineas, double guineas, and five pound pieces, which last weighed twenty six penny-weights twenty three grains and a half. Guineas have continued to be the

the circulating coin ever since, their value having been once raised by proclamation to twenty-two shillings, but by common consent diminished to twenty-one shillings and six-pence, and afterwards by proclamation to twenty-one shillings; in the reign of George I. quarter guineas were coined, but they are now out of use, though of late years a gold coin has come into circulation, in value one third of a guinea, and generally called a seven shilling-piece.

OBSERVATIONS ON GOLD COIN. In this kingdom the gold coins only have been for many years past, and are now, in the practice and opinion of the people, the principal measure of property and instrument of commerce. The integer, or pound sterling, which at the accession of William I. was a pound weight of silver, and which by successive debasements was reduced, in the forty-third year of Elizabeth, to $\frac{3}{8}$ parts of a pound troy of standard silver, is now become, by the course of events, and by the general consent of the people, $\frac{3}{4}$ parts of a guinea, or of five penny weights nine grains and a half of standard gold. This change in the basis of calculation has been visibly effected ever since Henry VII. issued the coins called sovereigns, intended to represent the integer or pound sterling; and gold coin is now the measure of almost all contracts and bargains; and by it, as a measure, the price of all commodities bought and sold is adjusted and ascertained. For these reasons the gold coin should be made as perfect and be kept as pure as possible. With respect to the quantity of gold coin now in circulation, it cannot be reduced to a positive certainty, and in the calculation a wide difference of opinion prevails between two persons enjoying the best means of obtaining information, and the greatest ability to draw from it the most correct inferences. Mr. Rose estimates it at 43,950,042*l.*; Lord Liverpool at only 30,000,000*l.*; Mr. Rose does not however form any specific calculation, but merely recapitulates, with occasional deductions, the sums coined during the present reign; while the Earl of Liverpool gives very cogent reasons for thinking that the estimate he has made is by no means too low.

OBSERVATIONS ON SILVER COIN. The silver coins are the second in rank, and next in value to those made of gold. The quantity of legal silver coins now in currency is certainly far too small for the purposes of commerce, particularly of the retail trade, and for the convenience of the people. Their deficiency in weight is at present even greater than before the general recoinage of the silver coins in the reign of William III. It is impossible to form any estimate or reasonable conjecture of the nominal value of the legal silver coins now in circulation; and

and coined in the mints of this kingdom : it is possible however to ascertain the value which they cannot exceed. The nominal value of the silver monies which were coined at the general recoinage in the reign of William III., and those which have been occasionally issued since that period, amounts to 8,076,092*l*. Of these the crown pieces, amounting in value to 1,553,047*l*., have almost wholly disappeared ; their value therefore must be deducted from the total above mentioned. It may fairly be estimated, that one moiety of the half crown pieces has in like manner disappeared ; half of their value, being 1,164,785*l*., must therefore be deducted, which leaves the like sum of 1,164,785*l*., being the value of the remainder.

What may be the nominal value of the legal shillings and six-pences, and silver coins of smaller denominations remaining in circulation, it would be idle to attempt ascertaining, except on the ground of probable surmise ; their number has certainly very much diminished ; deducting therefore, for the sake of conjecture, one third, the nominal value of those that remain will be 2,795,650*l*. The total value of all the legal silver coins now in circulation cannot, therefore, according to this estimate, exceed 3,960,435*l*., it is probably much less. There are certainly many counterfeits in daily use, but fewer perhaps than is generally imagined. It is not very difficult to discover them ; and the officers of the mint can very readily distinguish them from the legal silver coins by the quality of the metal. The present deficiency in weight of the legal silver coins, according to their several denominations, has been ascertained by the two following experiments ; the one made in December, 1787 ; the other, in July, 1798, by the officers of the mint.

In 1787, it was found that			
12 $\frac{1}{5}$ crowns	} were requisite to make up a pound Troy, instead of	12 $\frac{4}{5}$ crowns	} As issued from the mint.
27 half crowns		24 $\frac{1}{5}$ half crowns	
78 $\frac{1}{2}$ shillings		62 shillings	
194 $\frac{1}{4}$ six-pences		124 six-pences	

In 1798, it was found that			
12 $\frac{3}{8}$ crowns	} were requisite to make up a pound Troy, instead of	12 $\frac{1}{2}$ crowns	} As issued from the mint.
27 $\frac{3}{8}$ half crowns		24 $\frac{3}{8}$ half crowns	
82 $\frac{1}{2}$ shillings		62 shillings	
200 $\frac{3}{8}$ six-pences		124 six-pences	

And if we compare the deficiency in weight of these several denominations of silver coins, according to the last experiment, with

with what they ought to weigh by the mint indenture, the deficiency will amount in the

Crowns to	3 $\frac{16}{31\frac{1}{2}}$ per cent.
Half crowns	9 $\frac{9}{18\frac{1}{2}}$ per cent.
Shillings	24 $\frac{1}{2}\frac{9}{8}\frac{4}{8}$ per cent.
Six-pences	38 $\frac{1}{2}\frac{1}{2}\frac{1}{2}$ per cent.

COPPER COIN Before the Union of the two kingdoms under James I., there was not any brass or copper money coined for the use of England, though the French had it in 1575, as most of the neighbouring kingdoms and states had some time before. Queen Elizabeth, it seems, had it under consideration before her death, and the question was stated to Martin, warden of the mint, about coining farthings, whether to make them of silver or silver debased, or copper; and his report recommended that they should be copper, and of one penny weight each, or two hundred and forty in a pound weight, which should be current for five shillings. There was even, as is supposed, a die, or mould made, but the project was not carried into execution. Probably this prudent and politic sovereign intended an experiment on the utility of the measure, when, in the forty-third year of her reign, she allowed pence and half-pence of copper to be made for Ireland, and it is conjectured that they were also current, though not formally introduced in England, as a sort of licensed copper token had, for some time, been used in the city and vicinity of Bristol. In the reign of James I., the necessity of coining copper money appeared by the prodigious quantity of private tokens of lead and brass, which every tradesman made and paid for half-pence. Sir Robert Cotton reckoned that there were above three thousand retailers of victuals and small wares, in and about London, who used their own tokens; which, one with another, stood them in nearly five pounds a piece, whereof the tenth remained not to them at the year's end; and when they renewed their store, it amounted to fifteen thousand pounds, besides what was in the other parts of the kingdom. He therefore proposed the coining of tokens by the king's authority, whereby the advantage made by the retailers might accrue to the crown. The king approving this proposition, farthing tokens, as they were then styled, were struck with an engine, and on issuing them, a method of rechange was settled, whereby the subject had the use without loss, and the same were generally current throughout England, Ireland, and Wales. The genuine copper coin issued from the mint, consisted only in half-pence and farthings, both very handsome; queen Anne's farthings are considered highly curious from their scarcity, and there is an half-

half-penny of the year 1770, in which, by a mistake, a letter is left out, the name of his majesty standing Georius instead of Georgius; which is seldom to be met with.

It is more difficult to form any judgment of the value of the copper coins now in circulation, than of those made of gold or silver: in 1787, the officers of the mint were of opinion, that the lawful copper coins issued from the mint, and remaining in circulation, were equal in weight to nearly 1500 tons, and in nominal value to 322,000*l.* sterling: no copper coins are known to have been issued, since that time, from the mint. Mr. Bolton coined in 1801, by his Majesty's order, 1815 tons of copper in two-penny pieces, penny pieces, half-pence, and farthings, amounting in nominal value to 282,075*l.* 5*s.* 8*d.* *. The principle adopted in making these coins was, that the nominal value of each piece should be equal to that of the metal which it contained, and the price of the workmanship employed in making it: these new coins therefore were of much more intrinsic value than any others of that metal. It was also the wish of the lords of the committee to have made the new copper coins serve the purposes of weights, as this circumstance would have been of great convenience to all persons concerned in the retail trade. They so far attained their object, that each two-penny piece, made and issued in consequence of their advice, was of the weight of two ounces avoirdupoise, and each penny-piece of one ounce avoirdupoise. But from the rise in the price of copper, it was found impossible to conform to this principle in the halfpence and farthings, which were afterwards issued.

TOKENS. Having noticed the tokens circulated in the reigns of Elizabeth and James I., it may be fit to mention that of late years many pieces of that description have been issued in England. Whether the deficiency of copper coin, or the prodigious quantity of counterfeit money which, circulating in all directions, occasioned general mistrust, occasioned the production of these substitutes it is not material to determine. They began to be issued in the year 1787, by the Anglesea copper company, in pieces of two-pence, one penny, and an halfpenny each, which were valuable and beautiful. The example was followed by numerous masters of manufactories and other individuals in trade, but as the pieces greatly degenerated both in size and beauty, and as their great number occasioned confusion, they became generally decried, except perhaps in the immediate

	£.	s.	d.
* Two penny pieces	6,019	15	8
Penny pieces	183,177	18	0
Half-pence	88,506	18	4
Farthings	4,370	13	2

neighbourhood

neighbourhood of those who issued them. The Anglesea tokens could never occasion loss to their possessors, as the intrinsic value of the copper was greater, after a short time, than the nominal price at which they were circulated. The emission of dollars by the bank is also to be considered as a circulation of tokens, though of silver: they are not coin, although impressed with the effigy of the king, having never been recognized by royal authority. The first that were issued at four shillings and nine pence, having only a small impression of the king's head, were largely counterfeited, and the bank sustained a considerable loss; those which were stamped in 1803, at five shillings, are impressed on both sides all over the surface, in so strong a manner by the machinery of Mr. Boulton, that no fear is entertained of their being imitated for profit.

THE MINT. The kings of this realm had frequently mints of their own, not only in London, but in Southwark, Calais, Bristol, Hull, Dublin, and many other cities and towns of England and Ireland: these were all royal mints, and under the immediate management and direction of the king's officers. But as great inconvenience was found to arise from this dispersion, Queen Elizabeth established one general mint at the Tower, where alone the business of coinage has been transacted ever since, except when Charles I. was obliged, during the civil wars, to make money at Oxford, York, and Newark-upon-Trent, and the period of the recoinage after the revolution, when William III., for the sake of expedition, erected mints at Exeter, Bristol, York, and Winchester.

OFFICERS. The mint is managed by divers officers, formed into a corporation; which consists of a warden, master-worker, comp roller, matter of the assay, auditor, surveyor, clerk of the moneys, engraver, melters, blanchers, provost, moneyers, and some others.

The *Warden* receives the silver and gold from the goldsmiths, and pays for it; and oversees all the rest that belong to this office. His salary is 45*l.*

The *Master-Worker* receives the metal from the warden, orders it to be melted, delivers it to the moniers, and receives it back from them again. His salary is 300*l.*

The *Comptroller* sees that the money is made of a just assize; oversees the officers, and controuls them, if the money does not prove as it ought to be. His salary is 300*l.*

The *Master of the Assay* weighs the bullion, and takes care that it is according to standard. His salary is 142*l.* 16*s.*

The *Auditor* takes the accounts and makes them up.

The *Surveyor of the Melting* is to see the bullion cast out, and that

that the metal be not altered after the assay-master has made trial of it, and it is delivered to the melter.

The *Clerk of the Irons* sees that the working irons are kept clean, and fit for work. These two offices are executed by one person, who receives 132*l.* 10*s.* per annum.

The *Engraver* makes the stamps for the money; the *Melters* melt the bullion before it comes to coining; the *Blanchers* anneal, boil, and cleanse the money; the *Provost* of the mint provides for all the moneyers, and oversees them; the *Moneyers* are they who sheer the money and forge it; some beat it broad, others round it, and some stamp or coin it.

MODE OF COINING. The manner of stamping is all the public are permitted to see; and this is very quickly performed by an engine used by three men. This engine works by a spindle like that of a printing press, to the point of which the head of the die is fixed with a screw; and in a little kind of a cup, which receives it, is placed the reverse. Between these two parts, the metal to be stamped, being already cut to the size, and exactly weighed, is placed; and, by once pulling down the spindle with a jerk, is completely stamped. The whole process is performed with an amazing dexterity; for, as fast as the men, who work the engine, can turn the spindle, so fast does another with his finger and thumb put in a piece unstamped, and twitch out with his middle finger that which has been stamped. The manner of stamping all metals is the same; but a little more care is taken in one than in the other, according to their value, to prevent waste. The silver and gold thus stamped are delivered to be milled round the edges, by a method which no person is permitted to see performed.

ASSAY. Previously to the making of any coin, mint indentures are executed between the king and the corporation, declaring at what rate or nominal value the coins, therein ordered to be made, shall be current. To ascertain whether this contract has been faithfully performed, the process called assaying is applied both to the gold and silver coin; for as each has some portion of alloy, it is necessary to determine whether the quantity allowed has been exceeded, and also to judge of other particulars relating to the weight and fashion of the coins. The pieces of coin on which the assay is to be made are taken promiscuously and thrown into a box or chest, called in the old term a *pix*, and the facts concerning it are tried by members of the goldsmiths' company impaneled and sworn as a jury, whence this process is denominated *the trial of the pix*.

The art of assaying is carried to a very high degree of perfection; it has been improving from the days of Charles II. to the

the present time. In the reign of Charles II. the defect in the fineness of our gold coins is stated to have been *grs. 10d. $\frac{2}{3}$* per cent. At present the metal of which our gold coins are made is declared to be perfect standard *. This perfection in the fineness of the gold of which our coins are made is greatly to be attributed to the skill of that excellent officer of the public, the late Mr. Alchorne. In several experiments or trials of the *pix* made by the goldsmiths' company on twenty eight millions of gold coin, sent into circulation, there has been recorded no deviation of fineness. By the mint indentures, if the gold coin does not vary more than forty grains in fineness, or in weight in the pound, or both together, which is called the remedy, such gold coin is allowed to pass as standard; or, in other words, it is to be considered as perfect as the officers of the mint are under any legal obligations to coin it. In the trials of the *pix* by the goldsmiths' company, there has been no deviation in fineness; and in the same trial there has not been recorded more than an error of four grains in weight. The officers of the mint therefore might have varied in weight or fineness thirty six grains more in each pound, or as much as thirteen shillings and seven-pence three farthings per cent. without incurring any blame or penalty on that account, provided such error was not committed by design. It is clear from hence, that the remedy allowed in coining gold, by the mint indentures, is too great, and it produces this ill effect, that our gold coins are estimated in foreign mints at less than their intrinsic value. The alloy put into these gold coins is in its quality as proper as can be devised. From the great quantity of gold coins, which have been returned through deficiency in weight to the mint, since the general recoinage, a suspicion had been entertained, that the nature of the alloy put into these coins rendered them too hard and brittle, and subject to abrasion and speedy diminution, by friction. To ascertain this fact, Mr. Hatchett, an excellent chemist, was employed, under the inspection of that very eminent philosopher, Mr. Henry Caven-

* Previous to the recoinage of the gold in 1774, experiments were made of the fineness of the gold coin issued in the reigns of our several princes from Charles II. to the present time, by melting guineas of each reign into ingots of fifteen pounds each; and from the contrary ends of each ingot assays were made, by which it appeared, that in former reigns the gold coins were worse than standard in the following proportions:

		s.	d.	
Charles II.	26 grs. troy worse than standard,	9	10	2-11 per cent.
James II.	30 - - - - -	11	4	4-12 per cent.
William	13 - - - - -	11	2	1-11 per cent.
Anne	7 - - - - -	2	7	9-11 per cent.
George I.	6 - - - - -	2	3	1-11 per cent.
George II.	3 - - - - -	1	11	7-11 per cent.
George III.	standard.			

dish, to make experiments, for the purpose of shewing how far this evil was produced by the nature of the alloy put into our gold coins; and whether it could not be remedied by making an alteration in the alloy. The gentlemen before mentioned employed a considerable time in making experiments on the quality of different metals. They exerted great ability as well as industry to ascertain the point referred to them; and in a report, made by Mr. Hatchett, it appears to be the result of their opinion, that gold coins are not so likely to wear by abrasion and friction, if they are alloyed by silver and copper mixed; but that the difference between them and coin alloyed with copper alone, provided the copper be very pure, is so little, that there is no sufficient reason for altering the present alloy in our gold coins, consisting alone of pure copper. These observations apply with equal force to the silver coin.

GENERAL OBSERVATIONS. The author, from whose excellent work the foregoing remarks, and many of the preceding facts, are extracted, makes the following observations on the general business of the mint. "The subsisting regulations for receiving bullion of any description into the mint; for transferring it from one department to another; for preserving it in security while it continues in the custody of the different officers; and lastly, for returning it in the shape of coins to those to whom it belongs, are wise, and require no alteration: these regulations are very ancient, and probably of Norman origin. Some old statutes made in the reigns of Edward III. and Henry V. refer to these regulations; but they do not appear to have introduced any new ones; they contain only strict injunctions for carrying into execution such as had long subsisted." This is certainly, the Earl of Liverpool proceeds, no slight commendation: but the mint is defective in the lower departments, that is, in the operative or mechanical parts; it is in want of that new and improved machinery, which has of late years been invented, and from which every branch of British manufactures has profited in so great a degree. Coins were originally struck with a hammer only: in the reigns of Queen Elizabeth and Charles I. coins were occasionally made by what is now called the mill and screw; but this instrument was never introduced into constant practice at the English mint, till the year 1662, when letters and grainings were first placed on the edges of the coins. From that time to the present this mode of making coins has continued to be practised in the mint; but the new machinery now employed in the manufacture of every sort of metal, in which the mechanics of this country far surpass those of any other, has not in general been admitted into the mint. It is

an acknowledged principle, that machines which act with a given force, can work with more truth and accuracy than the arm of man, the force of which necessarily varies occasionally from several causes. Another practice has been invented; that of striking coins in a steel collar, so as to make them perfectly round, and all precisely of the same diameter; an improvement which certainly contributes at least to the beauty of the coin. New modes of putting what is called the graining on the edges of coins have also been invented; which at the same time that they protect the coins from being filed equally with the present mode, do not occasion those rough points or edges, which expose them to wear by abrasion or friction. For these, and many other valuable inventions, the public are indebted to the ingenuity of Mr. Boulton, of Soho, near Birmingham. It is singular, that though the manufacturers of England have greatly profited by these inventions, the officers of the mint have never, or at least not sufficiently, availed themselves of them: the mints of foreign countries are in search of them; and their governments in more than one instance have employed Mr. Boulton in erecting mints on his new principles; and parliament has authorised the same. One government (I need not name it) has, as I have learned from good authority, sent persons at different times, under pretence of treating with Mr. Boulton, in the course of his business, to obtain by artifice the knowledge of his inventions, for the benefit of the countries under its sway. But it is not only in the fashion and beauty of the coins, that the mint would profit by adopting these new inventions; there are other considerations, which strongly recommend their introduction into the mint: the coins of the realm will thereby be made with much more expedition, and with less charge to the public. By an account which I have seen, Mr. Boulton can coin at least ten times as many pieces, in a given time, as can be coined at the mint by the method now practised; and though, as I have already observed, the security of the precious metals, while in the custody of the officers of the mint, is at present very great, it will certainly be increased when fewer persons are employed in the operation. If a new silver coinage should be undertaken, expedition* is certainly of great importance; and I could wish that the whole might be performed at one mint in the Tower, rather than at several mints in different parts of the kingdom, as practised in the reign of King William, and at other preceding

* It would be easy to coin 60,000,000 of shillings, or 30,000,000 sterling, in a year, with the aid of the improved machinery; or even double, if the nature of the business should require it.

periods: it is certainly more easy to find artists of proper talents and abilities, sufficient in number to occupy the respective departments in one mint than in many.

OFFENCES RELATING TO COIN. By the statute 25th Edw. III. "If a man counterfeit the king's money; and if a man "bring false money into the realm counterfeit to the money of "England, knowing the money to be false, to merchandize and "make payment withal, or if the king's own minters alter the "standard or alloy established by law, it is treason." But gold and silver money only are held to be within the statute. These were the original laws; but they not being found sufficient to restrain the evil practices of coiners and false moneyers, other statutes have been since made for that purpose. By statute 5 Eliz. c. 11. clipping, washing, rounding, or filing, for wicked gain's sake, any of the money of this realm, or other money, suffered to be current here, shall be adjudged high treason; and by statute 18 Eliz. c. 1. the same species of offence is described in other more general words; viz. impairing, diminishing, falsifying, scaling, and lightening; and made liable to the same penalties. By statute 8 and 9 William III. c. 26. made perpetual by 7 Ann. c. 25. whoever, without proper authority, shall knowingly make or mend, or assist in so doing, or shall buy, sell, conceal, hide, or knowingly have in his possession, any implements of coinage specified in the act, or other tools or instruments proper only for the coinage of money; or shall convey the same out of the king's mint; he, together with his counsellors, procurers, aiders, and abettors, shall be guilty of high treason; which is by much the severest branch of the coinage law. The statute goes on farther, and enacts, that to mark any coin on the edges with letters, or otherwise, in imitation of those used in the mint; or to colour, gild, or case over any coin resembling the current coin, or even round blanks of base metal; shall be construed high treason. But all prosecutions on this act are to be commenced within three months after the commission of the offence: except those for making or mending any coining tool or instrument, or for marking money round the edges; which are directed to be commenced within six months after the offence is committed. And, lastly, by statute 15 and 16 Geo. II. c. 28. if any person colours or alters any shilling or sixpence, either lawful or counterfeit, to make them respectively resemble a guinea or half guinea; or any half-penny or farthing, to make them respectively resemble a shilling or sixpence; this is also high treason: but the offender shall be pardoned, in case (being out of prison) he discovers and convicts two other offenders of the same kind. In other acts of parliament,

liament, offences of inferior enormity are noticed. By statute 27 Edw. I. c. 3. none shall bring pollards and crockards, which were foreign coins of base metal, into the realm, on pain of forfeiture of life and goods. By 9 Edw. III. st. 2. no sterling money shall be melted down, upon pain of forfeiture thereof. By statute 17 Edw. III. none shall be so hardy to bring false and ill money into the realm, on pain of forfeiture of life and member by the persons importing, and the searchers permitting such importation. By 3 Hen. V. st. 1. to make, coin, buy, or bring into the realm any gally half-pence, fuskins, or dotkins, in order to utter them, is felony; and knowingly to receive or pay either them, or blanks, is forfeiture of an hundred shillings. By 14 Eliz. c. 3. such as forge any foreign coin, although it be not made current here by proclamation, shall (with their aiders and abettors) be guilty of misprison of treason. By 13 and 14 Chas. II. c. 31. the offence of melting down any current silver money shall be punished with forfeiture of the same, and also the double value: and the offender, if a freeman of any town, shall be disfranchised, if not, shall suffer six months imprisonment. By 6 and 7 William III. c. 17. if any person buys or sells, or knowingly has in his custody, any clippings or filings of the coin, he shall forfeit the same and 500*l*.; one moiety to the king, and the other to the informer; and be branded in the cheek with the letter R. By 8 and 9 William III. c. 26. if any person shall blanch, or whiten, copper for sale, (which makes it resemble silver,) or buy or sell, or offer to sale any malleable composition, which shall be heavier than silver, and look, touch, and wear like gold, but be beneath the standard; or if any person shall receive or pay at a less rate than it imports to be of (which demonstrates a consciousness of its baseness, and a fraudulent design) any counterfeit or diminished milled money of this kingdom, not being cut in pieces; an operation which is expressly directed to be performed when any such money shall be produced in evidence, and which any person, to whom any gold or silver money is tendered, is empowered by statutes 9 and 10 William III. c. 21. 13 Geo. III. c. 71. and 14 Geo. III. c. 70. to perform at his own hazard, and the officers of the exchequer, and receiver general of the taxes are particularly required to perform: all such persons shall be guilty of felony; and may be prosecuted for the same at any time within three months after the offence committed. But these precautions not being found sufficient to prevent the uttering of false or diminished money, which was only a misdemeanor at common law, it is enacted by 15 and 16 Geo. II. c. 28. that ~~if~~ ^{any} person shall utter or tender in payment any counterfeit coin, knowing it so to be, he shall for the first offence be imprisoned six months, and

find sureties for his good behaviour for six months more : for the second offence, shall be imprisoned two years, and find sureties for two years longer : and, for the third offence, shall be guilty of felony without benefit of clergy. Also if a person knowingly tenders in payment any counterfeit money, and at the same time has more in his custody ; or shall, within ten days after, knowingly tender other false money ; he shall be deemed a common utterer of counterfeit money, and shall for the first offence be imprisoned one year, and find sureties for his good behaviour for two years longer ; and for the second, be guilty of felony without benefit of clergy. By the same statute it is also enacted, that if any person counterfeits the copper coin, he shall suffer two years imprisonment, and find sureties for two years more. By statute 11 Geo. III. c. 40. persons counterfeiting copper half pence or farthings, with their abettors ; or buying, selling, receiving, or putting off any counterfeit copper money (not being cut in pieces or melted down) at a less value than it imports to be of ; shall be guilty of single felony. And by a temporary statute, (14 Geo. III. c. 42.) if any quantity of money, exceeding the sum of five pounds, being or purporting to be the silver coin of this realm, but below the standard of the mint in weight or fineness, shall be imported into Great Britain or Ireland, the same shall be forfeited in equal moieties to the crown and prosecutor.

PAPER CURRENCY. On this most important and truly delicate subject, the considerations to be presented to the reader are extracted entirely from the Earl of Liverpool's Treatise on the Coins of the Realm, the order of the paragraphs being only a little varied, and the forms omitted which are appropriately used by his lordship in an address to the sovereign.

“ The state of the paper currency of this country, in its
 “ manner and extent taken together, is without example in the
 “ history of mankind. The trade or profession of banking
 “ has been exercised in all countries and in all ages : it existed
 “ in the republics of Greece, and in ancient Rome : there
 “ were in all these states men who received money as a de-
 “ posit, repaid it upon the drafts of those who had entrusted
 “ them with it, and derived their profits from having this
 “ money in their custody ; but it does not appear that they
 “ ever issued notes, such as are now called paper currency. In
 “ the middle ages the traffic of money was exercised solely by
 “ the Jews ; for Christian men, as they were then called, from
 “ a mistaken principle of religion, would not engage in it : but
 “ the Jews, who interpreted the law of Moses in a different
 “ sense from the Christians, thought that they might lawfully
 “ carry it on with strangers ; and to them every man was a
 “ stranger

“ stranger who was not a Jew. The wealth of these Jews,
 “ and the extortions and cruelties to which they were exposed
 “ on this account, contrary to the principles of humanity and
 “ justice, are well known to every one. When commerce was
 “ first revived in the republics of Italy, banking companies and
 “ private bankers appeared in numbers, and carried on trade in
 “ money, and particularly bills of exchange, to a very great ex-
 “ tent. The origin and history of the banks of Venice and
 “ Genoa need not be here inserted: the wealth of these
 “ banks was very great; and many of the principal families in
 “ Italy derive their origin and ample fortunes from persons who
 “ once exercised the trade of banking. I cannot however dis-
 “ cover from history, that either the Jews before-mentioned,
 “ or the banking companies established in Italy, or any of the
 “ private bankers, ever issued what is now called paper cur-
 “ rency, that is to say, bills, or notes, payable or convertible in-
 “ to cash on demand by the person who issued the same, at the
 “ will of the holder. It is certain at least that they did not
 “ issue it in so great a degree, as to drive the coins out of the
 “ country; for it is asserted by historians of undoubted credit,
 “ that Italy at that time had drawn to itself almost the whole of
 “ the gold of Europe. After the example of what had been
 “ thus practised in Italy, banking companies were gradually
 “ established in many of the principal cities of Europe, parti-
 “ cularly at Hamburgh, Nuremberg, and Amsterdam: many
 “ of these corporate banks issued paper currency for the pay-
 “ ment of foreign, and sometimes inland, bills of exchange:
 “ but this privilege was always exercised under certain regula-
 “ tions and restrictions, sanctioned by the governments of these
 “ places, for the security of the individuals who trusted them,
 “ and for the preservation of public credit. It is singular, that
 “ it was found necessary to require, that the notes of these
 “ banks should be accepted and employed exclusively in certain
 “ payments: but the privilege thus given never included any
 “ payments for which a single piece of coin, or, as I believe,
 “ any small number of them, was sufficient, so as to interfere
 “ with the retail trade of the country. The reasons for esta-
 “ blishing this paper currency have been fully explained, in a
 “ former part of this letter; and I have never heard that pri-
 “ vate bankers issued paper currency in any European country,
 “ to the extent in which it is now practised in the British
 “ dominions: if it has prevailed any where to excess, it has
 “ been in the United Provinces of America. The practice
 “ of issuing paper currency within his majesty’s dominions
 “ first began in Scotland: it was natural that this device should
 “ originate in a country where there was a great want of coins
 “ and capital: the evils it produced were felt so early as the
 “ year

“ year 1765, when a wise law was passed by the legislature, to restrain and regulate it within that part of the united kingdom. This law did not extend to England, for the evil at that time had not been felt here: the English however soon followed the example of their northern brethren; and in the year 1775, the mischiefs arising from the issue of small paper notes were so severely felt, that a law was passed for regulating and restraining it; but it was afterwards found that this law did not remedy the evil, and a second law, still more restrictive, was passed in 1777. It was necessary however for a temporary purpose, to enact a short suspension of these laws, in consequence of the difficulties, to which public credit was exposed, in the year 1797. At the same time, the bank of England was discharged by the legislature from the obligation of paying in cash: but, contrary to expectation, these suspensions have been continued to the present day; and from that period the bank of England have issued notes for smaller sums, and to a greater extent, than they ever did before; and the number of private bankers spread over every part of the country, during that interval, has been more than doubled*.”

“ This currency,” his lordship observes, “ is carried to so great an extent, that it is become highly inconvenient to his majesty’s subjects, and may prove in its consequences, if no remedy is applied, dangerous to the credit of the kingdom. It is certain, that the smaller notes of the bank of England, and those issued by country bankers, have supplanted the gold coins, usurped their functions, and driven a great part of them out of circulation: in some parts of Great Britain, and especially in the southern parts of Ireland, small notes have been issued to supply the place of silver coins, of which there is certainly a great deficiency. If this practice is suffered to continue, as at present, without any limitation, there can be neither use nor advantage in converting bullion of either of the precious metals into coins, except so far as it may serve for the convenience of the people in their most private concerns; that is, no greater quantity than many of the writers, who have of late speculated on this subject, will allow to continue in currency: the bullion, of which these coins are made, had better be exported in its natural state, like any other unmanufactured commodity, for the use of which the trade of the country has no occasion. The coins of this realm,

* It is stated in the summary of the report of the secret committee of the House of Lords in 1797, that the number of country bankers, which had, in 1792, amounted to 280, had, in 1797, been reduced to 230. It appears by the list of country bankers now published, that they amount to 517.

“ when carried into foreign countries, will only be valued
 “ as bullion ; and the precious metals, whether exported in
 “ coins or in bullion, will equally serve the purpose of a com-
 “ mercial capital ; and it is useless and absurd to impose upon
 “ the public the expence of making coins, merely for the pur-
 “ pose of sending them out of the kingdom. It has been a com-
 “ mon artifice, practised by those who have written on paper
 “ currency, to confound paper credit with paper currency,
 “ and even the higher sorts of paper currency with the inferior
 “ sorts, such as immediately interfere with the use of the coins
 “ of the realm. Paper credit is not only highly convenient
 “ and beneficial, but is even absolutely necessary, in carrying
 “ on the trade of a great commercial kingdom. Paper cur-
 “ rency is a very undefined term, as used by speculative writers.
 “ To find arguments in its support, at least to the extent to
 “ which it is at present carried, they have been obliged to
 “ connect it with paper credit ; so that the principles, on
 “ which the use of paper credit is truly founded, may be
 “ brought in support of a great emission of paper currency :
 “ I do not mean to say, that even the higher orders of paper
 “ currency may not be very convenient, in carrying on many
 “ branches of the trade of a country so wealthy as Great Bri-
 “ tain : the sort of paper currency to which I principally
 “ object, is that which interferes with the use of the coins of
 “ the realm, more especially in the payment of labourers and
 “ artificers, of the sailor and soldier, and in the smaller
 “ branches of the retail trade of the kingdom. Many words
 “ are not necessary to point out the evils to which his majesty’s
 “ subjects are exposed, by the practice which now prevails,
 “ of issuing the lower sort of paper currency by country
 “ bankers ; the complaints on this head are universal. The
 “ notes of these country bankers have credit only within a
 “ certain extent or district : if a traveller passes from one dis-
 “ trict to another, he must provide himself with the notes of
 “ other bankers, which have credit within the district on which
 “ he is entering ; and an inconvenience to which travellers
 “ have hitherto been subject, in passing from one small inde-
 “ pendent state on the continent to another, is experienced by
 “ those who travel through the kingdom, in passing from one
 “ district to another ; so that the circulating medium of the
 “ different parts is various ; an evil which I believe never ex-
 “ isted before in one great united kingdom. But I have not
 “ hitherto described the principal evils resulting from this
 “ paper currency. It was natural to suppose, that the precious
 “ metals, being no longer wanted in the same degree, for the
 “ purpose of being converted into coins, the price of them
 “ would

“ would fall in the British market : on the contrary, for a con-
 “ siderable time, bullion, both of gold and silver, has not been
 “ generally sold, but at a price above the rate at which each of
 “ them is valued at the mint. It would not be proper for me
 “ at present to assign the probable cause of this apparent con-
 “ tradiction : in such a state of things, whatever may be the
 “ cause, no bullion, either of gold or silver, will be brought to
 “ the mint to be coined ; for it cannot be coined without a loss
 “ to the person who brings it ; and if it were converted into
 “ coins, the moment they were issued they would be thrown
 “ into the melting pot, and reconverted into bullion, because
 “ it would be of more value in the shape of bullion than in that
 “ of coins. Till some remedy is applied to this evil, no new
 “ system of coinage can be adopted, with any reasonable hope
 “ of success. When the situation of the bank of England was
 “ under the consideration of the two houses of Parliament, in
 “ the year 1797 it was my opinion, and that of many others,
 “ that the extent to which paper currency had then been carried,
 “ was the first and principal, though not the sole cause of the
 “ many difficulties, to which that corporate body was then,
 “ and had of late years, from time to time, been exposed, in
 “ supplying the cash occasionally necessary to the commerce
 “ of the kingdom ; for the bank of England being at the head
 “ of all circulation, and the great repository of unemployed
 “ cash, it necessarily happens, that whenever a sudden increas-
 “ ed supply of coins becomes indispensable, in consequence of
 “ private failures or general discredit, by which notes of the
 “ before-mentioned description are driven out of circulation,
 “ the bank of England can alone furnish the coins which are
 “ required to make up this deficiency ; and this corporate
 “ body is thereby rendered responsible, not only for the value
 “ of its own notes which it may issue, but, in a certain degree,
 “ for such as may be issued by every private banker in the king-
 “ dom, let the substance, credit, or discretion of such a banker
 “ be what it may : and if the price of both the precious metals
 “ in bullion then be above that at which they are rated at the
 “ mint, the bank of England have it not in their power to
 “ supply this deficiency, but at a great loss to its proprietors ;
 “ and even if they were to submit to this loss, and issue new
 “ coins in consequence, it would only be, as has been already
 “ observed, in order that they might be thrown into the melt-
 “ ing pot and converted into bullion ; so that till some remedy
 “ is applied to this evil the bank of England cannot, I think,
 “ return to the first principles of its institution, under which
 “ it has so long and greatly flourished, and re-assume, without
 “ any restriction, its payments in cash.”

INTEREST AND USURY. These subjects, though not immediately connected with the public revenue, are placed in this division, as naturally incident to the possession and use of money. *Interest* and *Usury*, though now used in senses as opposite as those which can be applied to the same act, in order to denominate it honest or unjust, seem in ancient times to have been synonymous, or at least convertible terms. When money was lent on a contract to receive not only the principal sum again, but also an increase, by way of compensation for the use; it was generally called *interest* by those who thought it lawful, and *usury* by those who did not so. In modern times, the application of these terms does not depend on the principles or opinions of him who uses them, but are defined notions of law; interest meaning the return made by the borrower according to law and custom for the loan, advance, or forbearance of money; usury the sum extorted by the person lending, beyond what the law allows, from the wants, hopes, or weakness of the borrower. An inconvenience resulting from an absurd notion entertained in ancient times, that all profit received for the loan of money was unlawful, and even damnable, was, that none would practise the trade of lending, but those who were indifferent to character, and hopeless of esteem; nor could the legislature frame laws for limiting those contracts which they altogether condemned, though they despaired of preventing them. More enlightened times brought forth a better understanding, and the statute 37 Hen. VIII. prohibited the payment of interest exceeding ten per cent. In the reign of his successor, religious zeal again prevailed so far as to prohibit all interest; but the statute of Henry VIII. was revived by the 13th of Elizabeth, cap. 8.; and ten per cent. continued to be the legal rate of interest till the 21st James I. when it was restricted to eight per cent. It was reduced to six per cent. soon after the restoration, and by the 12th of queen Anne to five per cent. All these different statutory regulations seem to have been made with great propriety. They seem to have followed and not to have gone before the market rate of interest, or the rate at which people of good credit usually borrowed. Since the time of queen Anne, five per cent. seems to have been rather above than below the market rate. Before the American war, the government borrowed at three per cent.; and people of good credit in the capital, and in many other parts of the kingdom, at three and a half, four, and four and a half. The statute of Anne against usury is as strong and operative as words can devise, so much so that Lord Mansfield declared that the wit of man could not evade it; it provides that no person on

any contract, shall, directly or indirectly, take for the loan of any money, wares, &c., above the value of five pounds for the forbearance of one hundred pounds for a year; and all bonds and assurances for payment of any money to be lent upon usury, whereupon or whereby there shall be reserved or taken above five in the hundred, shall be void; and every person who shall receive, by means of any corrupt bargain, loan, exchange, chevizance, shift, or interest of any wares, merchandizes, or other things, or by any deceitful way, for the forbearing or giving day of payment for one year, for their money or other things, above five pounds for one hundred pounds for a year, shall forfeit treble the value of the monies or other things lent. The wholesome severity of this law cannot in all cases prevent a practice to which avarice presents strong incitements, and necessity, inconsiderateness, and hope, offer ready votaries; but it is of general use in restricting the speculations of unprincipled men; and as the securities given are void, in whose hands, or on what consideration soever, they may be, the danger of such transactions, and the odium applied to those who engage in them, are greatly enhanced. The law however is not so strict as to prevent the extension of compensation where the risque, trouble, or inevitable expence of the lender fairly require it. Thus in the contracts known by the names of *bottomry* and *respondentia*, which depend on the arrival and safety of ships, and in annuities for lives, the receipt of interest far exceeding five per cent. is allowed, on account of the danger to which the lenders submit of a total loss of their capital. *Pawnbrokers* receive for the loan of money twenty per cent. although without any risque, but as a compensation for their care and trouble in registering and securing the pledges deposited with them, and the various other restrictions imposed on their business. There is also one ordinary transaction in which, by force of custom allowed as law, the receipt of more than five per cent. is permitted; it is in the *discount* of bills or notes of hand. In those cases the lender, deducting the interest from the whole sum specified, and advancing only the remainder, receives, in fact, a greater interest than the law supposes to be just. For instance, if a bill were drawn for one hundred pounds to be due in twelve months, the person discounting it would give but ninety-five; at the end of the year he would be paid five pounds, not for the loan or forbearance of one hundred pounds, but for the loan of ninety-five pounds, being at least at the rate of five pounds five shillings per cent.

Some have doubted whether the laws should in any ways restrain the rate of interest, and recommended that money, like
other

other articles in a market, should find its own level; but it should be considered that the laws against usury have always been remedial, the grievance of extortion has been severely felt before the legislature interposed, and the restrictions have been productive of general benefit, and increased general confidence; the wish to take advantage of individual distress having been superseded by the more honourable and beneficial desire of contributing to general prosperity: the former would yield benefits to the temporary speculist, the latter alone can promote the honourable views of the whole moneyed or commercial community. Nor is it true that extravagant interest facilitates loans; millions are lent at and under five per cent., where it would be difficult with less approved security to raise even a small portion of the sums; and it is invariably found that negotiations for loans on West India, or even Irish securities, where the interest is eight or six per cent. are extremely difficult, until the redundancy of money in the market has made English securities attainable only at a much inferior rate.

ARMED FORCE.

It has already been stated, as a high prerogative of the British monarch, that he alone has the right of declaring war and making peace; but as a check against the abuse of that power, parliament has retained the privilege of limiting the number of persons to be employed, and the still more essential authorities of issuing monies for paying, and framing laws for regulating them. In this division of the work, the navy and the army will be separately considered, and some few subjects of regulation added which are common to both. In treating of the navy, the royal or warlike ships will chiefly be considered, but some points affecting commercial vessels will occasionally be found inseparably connected; and some notice must be taken of the offices and institutions formed on shore for the benefit of the navy, and the local and personal regulations, as well as the general laws affecting those who follow the maritime profession, as well as those who by consanguinity or property become connected with them. The army will include every department of land force, as regulars, militia, and volunteers; with similar addition, as to offices and institutions. The topics common to both are principally some general laws relating to mutiny and desertion, and the form of trial by court martial.

THE NAVY.

ESTABLISHMENT AND PROGRESS. The insular situation of the British dominions pointed out, at an early period, the necessity of maintaining the security of the people by the equipment of a powerful navy; for while the riches of the country invited invasion, its want of external protection afforded every facility to those Northern plunderers who possessed the advantage of a superior fleet; and the annals of England, at a remote period, are stained with the perpetual narratives of the depredations and enormities of those barbarians. Alfred, who so well deserved the name of Great, succeeding to his throne at a period when his people were in the highest degree depressed by Danish tyranny and extortion, first rescued them by the union of valour and policy from the galling weight of a foreign yoke, and then planned their future security by the establishment and support of a powerful and well-appointed navy. The bravest and best disciplined army, he found, could be of but little avail against an enemy, who by his naval superiority could choose and vary his points of attack at pleasure. He therefore determined to meet the invaders on their own element; and the very earliest of his naval efforts were crowned with success. His superior genius did not merely imitate the vessels of the Danes or Frisians, but conceived an improved model of construction. His galleys were almost twice as long as those of the enemy, and carried sixty oars, some of them even more; and they were in all respects better fitted both for progress and hostility. By an unremitting and successful attention to his fleet, this great prince acquired the glorious title of Father of the British Navy. The marine force maintained by Edgar, the successor of Alfred, is stated to have amounted to upwards of three thousand ships, but this is generally considered as a gross exaggeration. Ethelred, his son and successor, was obliged for want of a navy to purchase the forbearance of a Danish invader; and in subsequent reigns, the want of the great national bulwark left the kingdom exposed to the insults and depredation of every lawless ravager. In the reign of Edward the Confessor the English recovered their military and naval character; chiefly under the conduct of his brother-in-law Harold, who, on the death of Edward without issue, became king, to the injury of Edgar Atheling. Harold appears to have been, after Alfred, the greatest of the Saxon princes; and like him he was sensible that a well-appointed navy was the safeguard of England. As soon as he became king, he was threatened with an invasion with William Duke of Normandy; and, knowing the great power and military talents of

of the duke, he provided above seven hundred ships, which he stationed on the coast opposite to France. Unfortunately a part of it was called off by the unexpected naval attack of Harold Hardrad, king of Norway, whose life paid the forfeit of his unprovoked hostility. William landing on the south coast, almost at the same time, saw his enterprise crowned with unexpected success; but the utility of a fleet was evident, as that of the Conqueror was, even after the death of Harold, blocked up in the ports of Pevensey and Hastings; as sovereign of the land, however, he was allowed to be the master of the navy, which instead of opposing augmented his power.

During the reign of the Conqueror and several of his successors little occurred to mark the advance of naval character; few invasions of England were attempted, and those easily frustrated; but the recovery of the Holy Land from the infidels, which so much engaged the attention of all Christian sovereigns, drew forth also the emulation of the English monarchs, and after several inferior attempts, the gallant Richard Cœur de Lion, in 1190, equipped a fleet of extraordinary force, both in respect to the number and size of the vessels. According to authors of good credit, there were thirteen vessels larger than the rest, called buffes, or dromones, which sailed with a triple spread of sails, about fifty armed galleys, and one hundred transports or vessels of burthen. Besides these, one hundred and six vessels, which had assembled at Lisbon, coasted round Spain as far as Marseilles, and thence took a departure for Syria, without touching at any other land. All these vessels rowed and also sailed. The policy or success of the holy war is foreign from the present subject, except as it served to increase the navy by exciting the spirit of enterprise, and furnished a motive for the equipment of large ships and the undertaking of distant voyages. At this time the courage and skill of the English mariners had become distinguished, and Richard, in his voyage from Cyprus to Palestine, captured a ship of uncommon magnitude, having on board eight hundred men intended to relieve the garrison of Acon.

In the reign of Henry III. the hostilities between England and France occasioned a grand naval engagement, in which British prowess and skill were displayed to great advantage. The fleet, composed of forty ships, was fitted out by the Cinque Ports to protect the kingdom against an invasion threatened by France, and placed under the command of Hubert de Burgh, captain of Dover castle, Philip D'Albany and John Marshall. They met the enemy's armament, consisting of eighty large, besides smaller vessels, on the 24th of August 1217, but not daring, with a force so inferior, to assail them in front, tacked about, and

getting to windward, bore down upon them, and sunk several of their ships, by running forcibly against them with the iron bows or beaks of their vessels. The archers likewise made great slaughter; but the victory was completed by means of a great quantity of quick lime in powder, they had on board, which being cast into the air, and blown by the wind into the eyes of the enemy, blinded them. The English either took or sunk a great part of the fleet, and the event terminated the hope of invading England. This action is only mentioned to shew the manner of fighting at sea in those rude times; and until the use of powder became thoroughly established, little further improvement was made, the shock of ships, the throwing of darts, the exertion of personal strength, and particularly in boarding, were the chief ordinary means; auxiliary to these were the use of dangerous and offensive missiles, the dispersion of quick lime, and the employment of burning arrows and combustibles for the purpose of setting ships on fire. "In sea engagements," says an author describing those in the days of Richard I. "they still preserved the ancient semicircular line of battle, stationing the strongest vessels in the wings or points with a view to inclose the enemy as in a net. The soldiers, stationed on the upper deck, (or on the raised platform or fore-castle,) made a close bulwark of their shields; and, to give them free room to fight, the rowers sat together below. When the hostile fleets approached, the sound of the trumpets and the shouts of the men gave the signal for the engagement, which commenced by a discharge of missile weapons on both sides: the sharp beaks, or spurs, were forcibly dashed against the enemies sides: the oars were entangled: and the hostile vessels being grappled together, a close fight ensued, while the engineers endeavoured to burn their enemy's ships with the Greek fire which was now in common use with the Turks and Saracens, as well as the Christians."

GUNS INTRODUCED. The earliest account of the use of cannon in naval engagements, is in 1372, when, by means of them, the Castilians gained a great victory over the English before Rochelle, burning, sinking, and destroying most of their vessels. From that period, however, the English commanders began to employ their genius and judgment in the improvement of the means of naval warfare which they have brought to a degree of perfection which renders the British fleet the pride and defence of the country, as well as the envy and terror of its enemies.

SOVEREIGNTY OF THE SEA. From the earliest times, the monarchs of England claimed the sovereignty of the British seas. Some having even taken the title of *Basileus quatuor marium*, or emperor

emperor of the four seas. This right has been recognized in the most solemn manner, in repeated treaties, by foreign nations; and the acts of concession and acknowledgment which proved its being admitted, have been generally continued without interruption, until of late times, when the practice of requiring them has been discontinued. Of the extent and nature of this claim, however, it may be fit to give a short account.

The four seas over which Great Britain claims dominion are denominated from the cardinal points of the compass. Toward the east is the German Ocean, generally called the North, but by the Danes, Swedes, and other northern regions, named the West Sea: and the boundaries on this side are the shores of those countries opposite to Great Britain that way, as the Netherlands, Germany, Denmark, and Norway. Southward is the British Ocean so called by Ptolemy; one part of which is commonly denominated the Channel, or, by the French, La Manche, which divides England from France. This way the boundaries extend to the opposite shores of France, to those of Spain, as far as Cape Finisterre, and to an imaginary line, drawn from that cape, in the same parallel of latitude to their boundary on the west, thus taking in that part of the British seas which consists of the Channel, the Bay of Biscay, and part of the Atlantic Ocean. On the west is that sea anciently called the Vergivian Ocean, which, where it washes the coast of Scotland, is from thence called the Deucalionian Sea. That part of it which flows between England and Ireland, is sometimes called the Irish Sea, anciently the Scythian vale, but now St. George's Channel, and the rest, the Western or Atlantic Ocean. Northward is the sea anciently known by the several names of the Hyperborean, Deucalionian, and Caledonian Ocean, now the Scotch Sea; in which are situated the Orcades, Thule, and other islands.* The proper boundaries of the British seas for the west and north, on those quarters, are generally reckoned a line drawn from the beforementioned imaginary line, extending from cape Finisterre, in the longitude of 23 degrees west from London, to the latitude of 63 degrees, and thence another line drawn, in that parallel of latitude, to the middle point of the land Van Staten in Norway; thereby taking in, to the west, that portion of them which consists of part of the Atlantic Ocean, and the Irish Sea or St. George's Channel.

The sovereignty or dominion of the British seas consists in an exclusive property over them, as well with regard to passage, as fishing. The recognition of this sovereignty consisted in what was termed the duty of the flag, which was, that all ships or vessels met by British men of war on those seas, do strike their flag, and lower their topmasts; or where they have no flag, that

that they lower their top-sail only, in deference to his majesty's sovereignty, and an implied acknowledgment that the prince grants a general licence for the ships of his friends to pass in those seas, paying him that duty.

OF THE KING'S FLEET. When England first found it necessary to oppose her enemies on the ocean, the navy equipped by Alfred was properly his own, but for a long period after his time, no fleet, and scarcely a single ship could be termed royal. Some indistinct occasional accounts are preserved of oars purchased for the king's galleys, mention is made in 1208 of a royal ship, and Richard I. certainly purchased some vessels for the crusade, but all these circumstances do not shew any thing like a naval establishment. In fact, the equipments fitted out for war were merely the whole mercantile shipping of the kingdom, pressed into the service: so that in those times the owners could never call their vessels their own. By these means the kings occasionally collected very large fleets, as Henry III. for instance, who obtained from all the realm above one thousand, of which three hundred were large ships, to be employed against his malcontent barons in Gascoigne. This monarch seems also to have had some ships which could properly be called his own, as mention is made of the king's galleys, in Ireland, and at Bourdeaux, and of a large ship called the Queen, which he let for hire to a merchant.

Besides the seizure of merchant vessels, it was a part of the royal prerogative to call on the towns and cities throughout the kingdom, as well as the Cinque Ports, to furnish ships in a certain proportion for defence of the realm, or invasion of the enemy. In this manner Edward III. in 1346, obtained upward of 700 ships, and near 15,000 seamen for the siege of Calais. The list is preserved, and, among many other remarkable circumstances, shews that London only supplied 25 ships and 662 seamen, while Fowey produced 47 vessels and 770 mariners, and Yarmouth 43 ships, and 1095 men. Several of these were distinguished as ships of war, but whether they were built and kept for that express purpose, or were merely larger and more fit for martial purposes than the rest of the fleet is not ascertained. Of the king's own property there were 25 vessels with 419 mariners, and for the purpose of building and equipping them, the king exercised the prerogative of demanding from his subjects forest trees, and from the sheriffs of cities the materials for his anchors and other supplies. The mode of obtaining a naval force by requisition from the different districts in the realm was practised without question or doubt during many ensuing reigns, until the ~~unfortunate~~ attempt of Charles I. to revive and commute it

it for a tax, under the name of ship-money, occasioned discussions, in the result of which it was declared illegal.

The progress of science having occasioned great improvements in maritime affairs, and the discovery of America having concurred with other causes in animating adventure and enterprise, the sovereigns of Europe became more anxious than they had been to possess the advantages of a regular marine establishment, and our king, Henry VIII. having entered into a league of mutual defence with the king of Spain, did, in 1512, by indenture with his admiral, Sir Edward Howard, covenant for the maintenance of eighteen ships, the largest of which, the *Regent*, was of one thousand tons burthen, and the smallest only of seventy. They were manned with 1750 soldiers and 1252 mariners, making, together with their eighteen captains, 3000 men, who were all victualled at the king's expence, but by the indenture, the admiral was, in consideration of a certain monthly stipend, to pay and clothe them, and the king was to receive half the value of prizes captured by sea or land, and all prisoners, being chieftains. This fleet was to guard the seas from the channel to the straits of Gibraltar, the king of Spain undertaking to protect the Mediterranean. In this reign the navy was consolidated, and means taken, by the establishment of offices, to secure its permanence; a service sufficient, notwithstanding his many enormous faults, to procure for Henry VIII. a title to the gratitude of his country. In his time, the building of ships became more scientific, the stores were accumulated in a regular and plentiful manner, the vessels were rated by the number of guns as well as quantity of tonnage, and, on the loss of his great ship, the *Regent*, he caused another of dimensions before unequalled in England to be built, which he called *Henry Grace de Dieu*. Edward VI. at the beginning of his reign found provided by his father's care upward of sixty ships, part of which he might strictly term his own, the residue being permanently hired from the proprietors, the ports and harbours of the realm improved, the mouth of the Thames fortified by batteries at Gravesend and Tilbury, magazines, store-houses, and docks systematically provided, and offices for maritime affairs duly constituted and ably filled.

The illustrious Elizabeth, provident in all things for the good and glory of her country, made great exertions to perfect the establishments commenced by her father for the advancement of the navy; filling her magazines with ammunition, military and naval stores, introducing into England the manufacture of gunpowder, and causing brass and iron ordnance to be cast. She also built a considerable number of ships for war, forming the most respectable fleet England had ever seen; erected *Upnor*
castle

castle on the river Medway; increased the pay of her naval officers and seamen; and gained from foreigners the title of restorer of naval glory, and queen of the northern seas. In imitation of the queen, the opulent subjects also built ships of force; the national navy, including the royal and private ships, was able to carry twenty thousand fighting men; and England no longer depended on Hamburg, Lubeck, Dantzick, Genoa and Venice, for a fleet in time of war. In 1573, Elizabeth possessed a fleet of fifty-nine ships, of forty guns and upwards, one of which carried one hundred guns, and eighty-seven ships of inferior force; of these only thirteen belonged to her, the residue being hired, but in 1588, she had at sea 156 ships of superior description, of which forty were her own. This increase, however, must have arisen after the defeat of the armada, proudly termed invincible, since, at that period, the British fleet consisted of only 76 ships paid by the queen, and 38 by the city of London; besides 83 coasters, &c. sent by several other sea ports; in all 197 vessels great and small, besides those of Holland and Zealand, carrying in burthen 29,744 tons, and having 15,785 men. The force intended for invasion was composed of 132 ships of superior description, the burthen being 59,120 tons, and the number of men on board 30,621, with 2630 cannon; besides which there were numerous galleons, galleasses, hulks, and other vessels. Of the fate of this armament it is not necessary here to treat, further than by observing that its signal defeat and destruction, by which Spain lost eighty one ships and thirteen thousand five hundred sailors and soldiers, besides a vast treasure, confirmed the policy of maintaining a powerful royal marine force, rendered all institutions for its establishment popular, and inseparably connected achievements at sea with the safety and glory of the nation. France first began under Henry IV. to aim at the creation of a navy. The assassination of that great monarch suspended the project, but it was soon revived by cardinal Richelieu, who inscribed on the sterns of the new ships, in allusion to the fleur de lis, the ensign of France, the elegant and appropriate motto "*Florisit quoque lilia pontis.*" From this establishment, which increased as the power of Spain declined, most of the labours of the British navy have arisen, but those labours are accompanied with so much glory, and have so absolutely confirmed the ascendancy of Great Britain both in arms and commerce at sea, that they form the brightest portions in her historical annals. It is not intended to trace with regular details the progress of the navy; for general information the following tables will suffice, as they exhibit its state at the end of every reign, with the particulars of its establishment at the present period.

A. D. 1547.

		Tons.
A. D.	1547. Henry VIII. - - - -	12,455.
	1553. Edward VI. - - - -	11,065.
	1558. Mary - - - -	7,110.
	1603. Elizabeth - - - -	17,110.
	1625. James I. } - - - -	uncertain.
	1649. Charles I. }	
	1660. Restoration - - - -	57,463.
	1685. Charles II. - - - -	103,558.
	1688. James II. - - - -	101,892.
	1702. William - - - -	159,017.
	1714. Anne - - - -	167,171.
	1727. George I. - - - -	170,862.
	1760. George II. - - - -	321,104.

In the first year of his present majesty's reign, when a war was conducted with the greatest glory and prosperity, the royal navy was thus composed.

2 Ships of the first rate, carrying 96 to 110 guns.					
11	-	2d rate	-	84	90
60	-	3d rate	-	64	80
43	-	4th rate	-	48	60
71	-	5th rate	-	26	44
40	-	6th rate	-	16	24
68	Sloops	-	-	8	14
12 bomb vessels;			39 hired armed vessels;		
10 fire ships;			7 royal yachts;		
4 store ships;			5 small yachts.		
Total, 372 vessels of all kinds.					

In 1806, which was likewise a period of war, maintained against an enemy formidable by means of unresisted power on the continent, the greater part of which was either subdued by, or in alliance with him, the British fleet consisted of the following ships.

	Line.	50 to 44.	Frigates.	Sloops, &c.	Gun-brigs and under.
In commission	128	15	155	176	247
In ordinary and building	88	19	68	41	31
Total	216	34	223	217	278

Making a grand total of 968 armed vessels.

The importance of the above force will be more justly estimated by comparing it with that of the other nations of Europe, of which at the end of 1805, the following was considered a correct abstract.

	Line, including fifties.	Frigate
Russia - - - -	60	100
Spain - - - -	57	44
Sweden - - - -	26	13
Denmark - - - -	23	23
Turkey - - - -	20	4
France - - - -	19	43
Batavian Republic - -	16	15
Portugal - - - -	10	5
Naples and Sicily - -	6	9
Etruria - - - -	2	4
Ragusa - - - -	0	12
Ecclesiastical State - -	0	5
Total	239	277

The immense preponderance of the naval force of Britain over that of her probable enemies, becomes more striking when we take into consideration the skill, courage, and enterprise of the seamen and officers, the confidence resulting from continual victory, and the emulation inspired by the glory of the greatest names which the annals of British history can produce, men in speaking of whom, terms of praise are exhausted without doing justice to their merit, and on whom honours and emoluments are showered while living; and honorary memorials accumulated when dead, without satisfying the public that sufficient homage has been paid to their valour, or sufficient tributes rendered to their merit.

ESTABLISHMENT IN TIME OF PEACE. This formidable force is not however always maintained. In time of peace, the ships in ordinary at each port are formed into divisions, to each of which is appointed a master to superintend, from the senior part of the list. Each ship has a boatswain, a gunner, a carpenter, and a cook, with their servants to remain on board; also a purser, who, under an order in council dated September, 1803, has permission to reside at a prescribed distance from the port, in order to be ready when called on: for which purpose he is to send quarterly, to the clerk of the cheque, at the port at which the ship is in ordinary, or building, a certificate from the minister of the parish that he is alive and a resident: this also enables his

his agent to receive his pay ; but he is not obliged, as heretofore, to place or continue a deputy or servant. The following number of seamen is allowed for each class of ships, who have been rated able, for six calendar months : one hundred guns and upwards, 36 men ; ninety-eight or ninety, 32 ; eighty, 30 ; seventy-four or seventy, 26 ; sixty-four, 20 ; fifty-four, 16 ; fifty, 14 ; forty-four, 12 ; thirty-eight or twenty-eight, 10 ; twenty-four or twenty, 8 ; sloops, 6 ; cutters, brigs, &c. in proportion to their size.

RATE OF SHIPS. For the general understanding of this subject, the following particulars should be noticed. There are several denominations of ships or vessels of war.

1st. The largest down to sixty-fours, inclusive, are ships of the line of battle.

2d. Fifties and fifty fours, which form a class of themselves, are never placed in line of battle but in cases of great emergency.

3d. Forties to twenties inclusive, which are, without exception, frigates.

The foregoing classes are commanded by post captains, and they mount long guns or carronades on their quarter decks and forecastles. All are pierced for and mount more pieces of cannon than by the rules of the navy they are registered for on the books. If any are wanted for services that do not require complete equipment as men of war, and do not take on board the full number of guns and men, they are, in that case, commanded by officers of inferior rank to post captains.

Yachts rank with third rates, except the king's particular yacht, which ranks as a second rate. Fire ships and hospital ships rank with 5th rates.

4th. Eighteen to sixteen guns inclusive are sloops of war. Fire ships and bombs, being commanded by commanders, are also reckoned under this denomination. Merchant vessels purchased by government and fitted as sloops, are registered as the latter.

5th. Gun-brigs, and vessels fitted as gun-vessels, stand next in rank above schooners; next cutters; and lastly, tenders, with other small craft. The establishment of rates and men is as follows :

1st rate,	100 guns and upward,	875	men to	850
2d,	98 to 90	-	-	750
3d,	80 to 64	-	-	650
4th,	60 to 50	-	-	420
5th,	40 to 32	-	-	300
6th,	28 to 20	-	-	200
Sloops,	18 to 16	-	-	125
Gun-brigs,	} 14 to 6	-	-	50
Cutters, &c.				
				25

When

When an admiral's flag is hoisted on board a first rate, her complement of men is increased to 875. When a vice-admiral's, to 870. When a rear-admiral's to 865.

Ships of the line, fifties, frigates, and royal yachts, are commanded by post captains; sloops of war, bombs, fire ships, armed ships, store ships, and *armies en flute*, under fifty guns, by commanders. Schooners, cutters, and other small armed vessels, by lieutenants. Sloops fitted for the conveyance of stores are occasionally commanded by masters, and small craft by midshipmen who have passed for lieutenants.

Upon the official register of the navy there are no sixty-eights or fifty-sixes; nor any frigates classed higher than forties.

First and second rates have three complete decks or tiers of guns fore and aft. Third and fourth rates, two complete decks or tiers of guns fore and aft. Fifth and sixth rates, which include sloops of war and all under, are some of them rigged with three masts, as ships, some with two masts, as brigs, &c.

MODE OF PROVIDING SHIPS. In ancient times, as already has been shewn, the king, by virtue of his prerogative, could call on the subject to supply vessels for defence of the realm or attack of the enemy; the sea ports, and subsequently the whole kingdom, were obliged to contribute to the formation of the navy; a mixed fleet was then formed, partly of ships belonging to the crown and partly of those which were hired from private proprietors; but as the want of a navy became more sensibly felt, the care of government was more strongly directed to it, and public docks and arsenals were established for the building, repairing, and equipping of vessels for the public service. It has also been usual, in late years, to contract for the construction of ships at the dock yards of the mercantile ship builders.

DOCK YARDS. There are six principal dock-yards in the kingdom; at Deptford, Woolwich, Chatham, Sheerness, Portsmouth, and Plymouth.

DEPTFORD was first raised into consideration by Henry VIII. who erected a storehouse, and, by a charter dated in the 4th of his reign, established a guild, or corporation, for the increase and better conducting of the royal navy, known by the name of the Trinity House. Camden, who takes no notice of Woolwich, mentions Deptford, as being, at the time he wrote (1607), a noted dock. The area of the yard has been since more than doubled. A wet dock of two acres for ships, and another of one acre and half for masts, have been added. It was at this place that Peter the Great of Muscovy studied ship building; and in this yard, the little ship, in which Sir Francis Drake sailed round the world, in the year 1580, was laid up by order of queen Elizabeth in remembrance of the voyage.

WOOLWICH.

WOOLWICH. This dock precedes all in point of antiquity; ships of war had been built here before the reign of Henry VIII; but that prince added to the celebrity of this yard, by building, in the fourth year of his reign, his famous ship of more than one thousand tons burthen, named *Henry Grace de Dieu*, but more commonly called the Great Harry. At this dock likewise were built the Prince Royal of fourteen hundred tons, in the 8th of James I. and the Sovereign Royal, a ship of the first rate, in the 13th of Charles I.; also three famous first rate ships of war, called the Charles, the James, and the Saint Andrew, in the reign of Charles II.

CHATHAM yard owes its origin to queen Elizabeth, who, in the second year of her reign, built a dock at a great expence on the spot beneath the church, which, in the next reign was assigned to the office of ordnance; and a more extensive yard was constructed, in 1622, on the adjoining bank, where it is now situated. Gillingham road, on the Medway, just below Chatham, had early been a principal station for ships, and is mentioned as such by Hollingshed. It was on that account that Upnor castle was built in the reign of Henry VIII.

SHEERNESS had no existence till Charles II. constructed a fort by means of piles on a sand bank, at this point of the isle of Sheppey, as a more convenient barrier against the approach of the enemy than Queenborough castle. An alluvium of soil being soon after collected on the south side around several hulks which were run ashore there, it was deemed a proper place for the establishment of a yard on a small scale, as an appendage to that at Chatham, for the occasional repair and refitting of ships, without their going up the Medway, and for the construction of ships of lower rates. The forts were taken and dismantled by the Dutch in 1667, but were soon restored, and Sheerness is now a place of considerable strength, and celebrated for its well, planned and executed a few years since by Sir Thomas Page, to supply what had been its chief defect, the want of fresh water. The principal inconvenience attending the yard is, that it is a thoroughfare to all persons coming into or going out of the fort; though this is less felt than it would otherwise be, from the whole place being the property of the crown.

PORTSMOUTH had been long celebrated for its harbour, and noted as a fortified place, before any dock was established there. The walls were originally of timber and mud; but two towers of freestone at the mouth of the harbour were begun by Edward IV. continued by Richard III. and completed by Henry VII.; and fortifications of freestone were added by queen Elizabeth. Southsea castle, and the block-house, were built by Henry VIII. who made this one of the principal rendezvous for his navy. The dock

dock begun in that century (though inconsiderable at first) has been gradually improved and extended, till it has become the most complete naval arsenal in the kingdom; and, with the advantage of the fortifications, the harbour and the roads at Spithead and St. Helens, forms a most eligible station for the royal navy. On the third of July 1768, a dreadful fire broke out at midnight, in the dock-yard, and raged with great fury. It rained very hard all that night, and it was thought the stores caught fire by the lightning. In the warehouses that were consumed were deposited one thousand and fifty tons of hemp, five hundred tons of cordage, and about seven hundred sails, besides many hundred barrels of tar and oil. A still more dreadful conflagration happened in the dock-yard on the 27th July, 1770; it was first discovered by the centinels on duty about 5 o'clock in the morning, when the drums beat to arms, and, in a few minutes after the dock-yard was all in a flame. The house where the pitch and tar were lodged was soon reduced to an heap of rubbish, and in a few minutes it broke out in four different parts, and burnt with such violence, as to threaten the whole place. The inhabitants were filled with the greatest consternation; but by the wind shifting about, and the assistance of the marines and sailors its progress was stopped before seven in the evening. The rope house was again destroyed, December the seventh, 1776, when the damage was estimated at sixty thousand pounds. For this act an incendiary named James Aitkin, but called John the Painter, was found guilty and executed.

PLYMOUTH, though originally a small fishing town, grew into consequence from the excellence of the havens at the mouths of the Plym and the Tamer, the former of which is mentioned by the historians of the sixteenth century, as being, in their time, walled on each side of the entrance, and chained across in time of necessity, and as having a blockhouse on a rocky hill on the south side. At the period of intended invasion by the Spanish armada, it was one of the stations of the English fleet; but the dock-yard is of later date than any of the others, having been established by William III. who began in 1691, and finished in 1693, a wet and dry dock, both of considerable magnitude. The yard is since greatly increased, and forms a small town, with a separate chapel, and has every appendage that can render it a complete naval arsenal.

There is a naval storehouse at Harwich, and ships have been occasionally built there, but it has no pretensions to the title of a dock-yard, and is only calculated for refitting any of the king's ships, which happen to touch there, for which purpose there is a storehouse with offices belonging to it.

Deal and Leith in Great Britain, and Kinsale in Ireland, are in the

the same predicament, as are likewise Gibraltar, Antigua, and Greenwich in Jamaica, at each of which there are storekeepers, and at the last, master shipwrights; but at Halifax, in Nova Scotia, there is a regular dock-yard, though on a small scale, established in the reign of George II., and superintended by a resident commissioner, with proper officers in the different branches.

GOVERNMENT. The dock-yards are all under the general controul and direction of the commissioners of the navy: those at Deptford and Woolwich are under the immediate inspection of the navy board, and are visited weekly by the comptroller and surveyor of the navy. The yards at Chatham, Portsmouth, and Plymouth, are respectively superintended by a resident commissioner, who conducts the business under the direction of the admiralty and navy boards, of which latter the resident commissioners are members: the yard at Sheerness is under the charge of the commissioner resident at Chatham.

OFFICERS. The establishment of each of the dock-yards consists of the five following principal officers. A master, or master's attendant, a master shipwright, a clerk of the cheque, a storekeeper, and a clerk of the survey; each of whom, as well as the commissioners resident at three of the yards, have a certain number of clerks employed under them. There are likewise at each yard, a surgeon, a boatswain, and a master porter, and at all the yards, except Sheerness, a purveyor; likewise at all except Sheerness, and Deptford, a clerk of the rope yard, and a master rope-maker.

The *Commissioner*, at the yards where one is resident, superintends all the works carrying on, and the due performance of the duties incumbent on the officers and workmen; he controuls the payment of the ships afloat, and those made at the pay-office on shore; superintends the sale of old, and purchase of new stores when necessary; examines and proves the entry of seamen, and the discharge of those unfit for service, also the entry of artificers, labourers, &c. for the yard. He causes the standing orders for the good government of the yard to be read to the officers and workmen quarterly, sees that the proper precautions are taken for the security of the yard, administers the oath for qualifying commission and warrant officers; and for receiving widows pensions; inspects and transmits to the navy board the accounts of the officers of the yard, and corresponds with the admiralty and navy boards on all matters relating to the ships in port or dock, and on all occurrences in his particular department.

The *Master Attendant* assists at the survey of all boatswain's stores brought into the yards, and inspects the works going

going on in the sail-loft and rigging house ; examines the state of ships arriving from sea ; visits occasionally those laid up in ordinary ; musters the ordinary ; and makes a proper distribution of the men for the services on shore, and on board the ships in harbour ; attends the launching, docking and undocking of all ships of war in the yard, the launching of king's ships built in merchants' yards, and the survey, valuing, and approving of such ships as are tendered to government for purchase or hire, as transports or store ships, and reports his opinion thereon, jointly with the master-shipwright, and clerk of the survey.

The *Master Shipwright* assists in surveying the quality of all shipwrights' stores received into the yard, and certifies the same ; inspects all the shipwrights' work going on in the yard or elsewhere when required ; attends the survey, valuation and approval of ships tendered for service or hire, and reports his opinion thereon, jointly with the clerk of the survey and master attendant.

The *Clerk of the Cheque* keeps lists of all the shipwrights, artificers, and labourers belonging to the yard, of all the officers, ship-keepers, and seamen belonging to the ordinary, and of all the officers and seamen belonging to the ships in commission at the ports ; musters the yards daily ; the ordinary weekly on board, and monthly on shore ; and the ships in commission once or twice a week ; makes out quarterly pay-books for the yard and ordinary ; and transmits to the navy board copies of the musters of the ships in commission on their leaving the port, and sends to the admiralty and navy boards weekly accounts of them during their stay. When there are any hired transports or vessels at the port, he musters them daily, and sends accounts to the navy board ; he surveys the quantity and quality of all stores received, and inspects and measures all works performed by contract in the yard ; and, on application, makes out bills for the same : he receives for the treasurer of the navy the money arising from the sale of old stores, pays the contingent expences of the yard, of which he makes up a quarterly account.

The *Storekeeper* inspects, jointly with the other principal officers, all stores served into the yard, and upon finding them of proper quality, receives and deposits them in the proper place : he signs bills for all he receives, and issues none without a warrant signed by two of the principal officers : he keeps an exact account of the receipt, issues, and remains of every article, and sends monthly accounts to the navy board.

The *Clerk of the Survey* grants warrants, jointly with the master attendant and master shipwright, for the issue of all stores to boatswains and carpenters of ships of war, and keeps a charge

charge on them for the stores received; adjusts and balances their respective accounts, and transmits fair copies to the navy board. He surveys all rigging, sails, ground tackle, and stores of every kind in the boatwains' and carpenters' charge; joins the proper officers in the yard in making timely requisitions to the navy board for supplies; also in taking surveys of all stores and materials served into the yard, and of all works performed by contract; and in forming estimates for the ensuing year, under the heads of extra, wear and tear, and ordinary; and he transmits quarterly to the navy board accounts of the actual expence under each of these heads. He keeps such further charges and accounts as are necessary to ascertain the quantity of stores in hand, and their use and value; and assists the master attendant and master shipwright in the survey, valuation, and approval of transports, and other vessels tendered for purchase or hire.

NAVY BILLS. From the account here given of the several principal officers, it appears that there are certain occasions on which they act collectively, such as surveying and certifying stores delivered into the yard, and signing bills for the amount; the process on which occasions is as follows: copies of all contracts made by the board for stores are transmitted to the officers of the yard where the stores are to be delivered: upon the delivery of such stores, it is the duty of the master attendant for stores in his line, and of the master shipwright in his line, to attend the clerk of the cheque, store-keeper, and clerk of the survey, to examine their quality and quantity, their agreement or disagreement with the terms of the contract, and to enter the same in a book. On receipt of the articles into store, the store-keeper charges himself with them, the clerk of the survey keeps a cheque charge upon him for them, and the clerk of the cheque makes out a bill for the amount, according to the contract which he and the store-keeper sign; and the master attendant, or master shipwright, according to the description of stores, together with the clerk of the survey, certifies on the back of such bill, that the stores were good, fit for the service, and agreeable to contract, or to the warrants by which they were received; the commissioner of the yard signs his name on the front of the bill to the amount, which is written in words at length; this bill so signed and certified, is sent to the navy board, where it is signed by two other commissioners, and when delivered to the party, entitles him, or his assigns, to receive the amount in due course. Such is the progress of a navy bill.

FURTHER DUTIES OF OFFICERS. The attendance of the resident commissioners is constant; they have all houses in their

their respective yards, and are never absent without leave from the admiralty. All the other officers and clerks in the yards are efficient and perform their duty in person. The commissioners of the dock-yards have not any instructions for their government; but the following officers have very full and particular instructions from the navy board; viz. master attendant, master shipwright and his assistants, clerk of the checque, store-keeper, clerk of the survey, clerk of the rope yard, master rope maker, boatswain, and porter.

EMOLUMENTS. Besides the established salaries, wages, and allowances of each, the principal officers have certain emoluments, but not of very great value. The principal officers have a house unfurnished (except with certain articles of ship furniture which are allowed to be issued for them from the stores); with a few other perquisites peculiar to other offices. All the chief officers of the yard, including the master, shipwrights, assistants, and the surgeon, boatswain, and porter, have houses in the yard. Some officers have apprentices, and the number allowed to each, is as follows: master shipwright five, his assistants, each three, master caulker three, master maker two, master boat builder two, purveyor one, master rope maker four. The wages for these apprentices are small at first, but increase every year. The chief receipt of the master porter arises from a tap, which he is allowed to keep for the convenience of the yard, and his own advantage.

A considerable abuse formerly arose in the several yards from indulging the artificers and workmen with permission, every day at noon, to take away a bundle of chips; the quantity originally allowed was as much as each could carry under his arm; but they had gradually raised them to their shoulders, and carried double the portion originally allowed. They used to leave off work, perhaps half an hour before bell ringing, for the purpose of gathering together these chips, and, even during working hours, sometimes they clandestinely cut up useful timber to complete their bundles; and opportunities were found for secreting valuable stores, such as copper, brass, &c. The suppression of this abuse was long recommended, and often attempted, but the effort occasioned conspiracies and mutinies among the men; until, at length, in 1802, it was, if not totally suppressed, at least so far reduced, as to be no longer a grievance of any great importance.

INSPECTOR GENERAL'S OFFICE. For the preservation of regularity, and encouragement of improvement in all matters relating to the construction of ships, an office is established at the admiralty, with an inspector general of his majesty's naval works, whose duty it is, to consider of all improvements in relation

lation to the building, fitting out, arming, navigating and victualling ships of war, and other vessels employed in his Majesty's service, as well as in relation to the docks, ships, basons and other articles, appertaining to his Majesty's establishment. The inspector has a salary of 1250*l.* and under him are officers with salaries as follow. An architect, 400*l.*, a mechanist 400*l.*, a chemist 400*l.*, a secretary 300*l.*, a metal master 200*l.*, a draftsman 200*l.*; a first clerk 150*l.*, and a second clerk 100*l.*

IMPROVEMENTS IN THE NAVY. The present state of the navy, so glorious and advantageous to the country, is the result of great attention, or fortunate circumstances, and of a continual application of the genius, wealth and industry of the nation to all objects connected with the building, securing, and management of shipping. Warlike vessels, of large size, were ever considered desirable, but in this particular, England was long behind Spain, for although Henry VIII. had built his famous *Grace de Dieu*, vessels of great magnitude were so little encouraged in England, that the English fleet was considered unable to cope with the armada, not less on account of the superior number than the superior size of the Spanish ships. Even in the reign of James I., in 1610, a ship of 64 guns, and 1400 tons burthen, called the *Prince*, was deemed superior to any vessel before seen in England. Since that time, however, the British navy has been furnished with ships of such dimensions, that the 64 is the smallest regularly admitted into the line of battle. France and Spain still build larger ships, but the construction is not considered sufficiently advantageous to induce the British government to rival them, and the success of British fleets leaves no reason for calling this judgment in question.

FIRE SHIPS. It was long before the ancient semicircular line of battle fell into disuse; it was preserved in the combat with the Spanish armada; but as, at that time, fire ships began to be employed, it is probable that the mode of fighting underwent, from that circumstance, a necessary alteration. This destructive artifice, now no longer formidable, because no longer operating by surprise, was considered at the time a most extraordinary invention; and certainly it is no deduction from the praise due to the brave commanders of the English fleet to shew that traces of such a discovery are found in more ancient history, since there is no probability that they derived information from any work, or were supplied with the means of execution from any source but their own judgment.

THE COMPASS. In speaking of improvements in nautical affairs, it is impossible to omit noticing the grand discovery which has always been found sufficient to give security to enter-

prizes otherwise hopeless, by enabling fleets or single ships to traverse the trackless level of the ocean with unerring certainty, and at all times to ascertain the point to which the course of the vessel ought to be directed. This discovery is, in fact, the basis of all naval grandeur, for it would be a useless and even unnatural effort to build ships of a large size, when the impossibility of making long voyages would keep them always near shore, where the chief recommendation of the vessel would be to draw little water, and when there would be no necessity for stores of various kinds to be accumulated in such quantities as are required by numerous crews for long adventures. An account at some length, of this most valuable instrument, cannot be deemed improper in this place, especially as many errors respecting it have been currently received. The magnet or loadstone was known to the ancient philosophers of Greece for its quality of attracting iron, and in later ages, produced admiration, without being considered of use; but it does not appear that until about the end of the twelfth century, any discovery had been made of its more valuable property, its polarity, or that power by which one point of it, or even of a needle or bar of iron or steel touched with it, turns to the North Pole, and the opposite point to the South. Toward the conclusion of the twelfth century, a notice on this subject appears in the poetical works of Hugues de Berry, called also Guiot de Provins, who says, "This (polar) star does not move. They (the seamen) have an art, which cannot deceive, by virtue of the *manette*, an ill looking, brownish, stone, to which iron spontaneously adheres. They search for the right point, and when they have touched a needle on it, and fixed it on a bit of straw, they lay it on the water, and the straw keeps it afloat. Then the point infallibly turns towards the star; and when the night is dark and gloomy, and neither star nor moon is visible, they set a light beside the needle, and they then can be assured, that the star is opposite to the point; and thereby the mariner is directed in his course." This rude description of this most important instrument is confirmed by other authors, and yet, in defiance of these unquestionable authorities, the Italian writers claim the honour of inventing the compass for John Gioia or Flavio Gioia, a citizen of the commercial city of Amalfi, who, they say, first used it in the year 1302, or 1320: and as a proof, they adduce a line of Anthony of Palermo, a Sicilian poet, "*Prima dedit nautis usum magnetis Amalfi.*" From the simple contrivance of laying the magnetic needle on a floating straw, as described by Guiot, navigators, by gradual improvements, in the course of time, came to add the use of a circular card affixed to the needle, and traversing with it, on which

which were drawn lines representing the various winds. It is probable that Gioia of Amalfi was the first, who thought of using a card, and that only eight winds, or points, were drawn upon it. The French, the Venetians, the Germans, and the Scandinavians (or people of Norway and Denmark) have all disputed with those of Amalfi, and with each other, the honour of discovering this most noble instrument. Some praise may perhaps be due to every one of them, and, as is generally allowed, also to the English, for improvements made upon the original invention. In 1263 the compass, fitted into a box as now, though probably without a card, was in common use among the Norwegians, who had so just an idea of its great importance, that they made it a device of an order of knight-hood; and it is mentioned as well known in Scotland, by Barber, a writer of that country in the fourteenth century. It is probable that the English, as well as all the southern maritime nations, were acquainted with it before it was used in Norway and Scotland.

In process of time, navigators, or experimental philosophers, discovered that the polarity of the magnetic needle was not perfectly true, and that it diverged, or varied, somewhat from the real north point. Succeeding experiments showed, that the variation was not every where the same; that there was a line on the surface of the globe, on which there was no variation; that on one side of that line the north point of the compass varied to the eastward, and on the other to the westward, of the true north; and that the quantity of the variation increased in an unknown proportion to the distance from the line of no variation. This irregularity was known in, or before, the year 1269, when Peter Adfizer wrote on the various properties of the magnet, the construction of the Azimuth compass, and the variation of the magnetic needle. The discovery of the variation has, however, been attributed by some to Christopher Columbus in 1492, and by others to Sebastian Cabot in 1500, who may have obtained this reputation because, in their voyages, wherein they made more difference of longitude than former navigators, they had more ample opportunities of making experiments on the variation.

It was afterwards discovered, that the variation not only differed as it receded east or west from the line of no variation, but that that line itself, which was found to be an oblique waving curve, had also in the northern hemisphere shifted to the eastward of its former station. The nice observations of the eighteenth century have demonstrated, that the variation is in a progressive and perpetual state of alteration; and also, that it is so far affected by heat and cold, as to differ considerably

in summer and winter, and even in the course of the same day. Another property of the magnet is the *dip*, or inclination of the north end of the needle toward the horizon, as if heavier than the south end, which is therefore in fact made a little heavier in order to counterpoise the dip. By the use of the magnet, and the application of its wonderful powers, man has become acquainted with the whole globe which was given him to inhabit, and been enabled to make prodigious improvements in the important sciences of geography and natural history. The compass has given birth to a new era in the history of commerce, and rendered navigation expeditious and comparatively safe. By the use of this noble instrument the whole world has become one vast commercial commonwealth; the most distant inhabitants of the earth are brought together for their mutual advantage: ancient prejudices are obliterated, and mankind are civilized and enlightened. And, by the compass, Great Britain has acquired that naval pre-eminence, which she confessedly possesses over all the maritime nations of the world.

OTHER IMPROVEMENTS. Without noticing the quadrant, the various telescopes both for night and day, the chain pump, the log, and many other philosophical and mechanical instruments and contrivances connected with nautical affairs, some may be mentioned in a general way, as from their constant use they present themselves to continual observation, and as they have been the objects of fame or pecuniary remuneration.

SHEATHING was first practised in 1553, on a ship fitted out for a voyage of discovery, and considered a most ingenious invention, calculated to preserve the vessel from the worm, and many other injuries. It was at first performed with thin plates of lead. A supposed improvement on sheathing was the object of a patent in the reign of Charles I., under the name of a cement to dress ships, to prevent their being burnt in sea fights, and to preserve them from the worm or bernacle; but this is mentioned only as one of many inventions for the benefit of the navy for which patents have been obtained, but which have not been generally adopted. A method of preserving the bottom of ships from the worm, and from the adhesion of weeds, had been some years before 1761 submitted to the society for the encouragement of arts and manufactures; and some experiments made in various climates, with wood prepared according to the directions of the inventor, were found satisfactory; so that this new method was supposed to be of infinite service to all kinds of shipping: but it was soon superseded by another, and apparently a more effectual preservative, consisting of thin sheets or plates of smooth copper, which no worm or
animal

animal of any kind will touch, and no vegetable will adhere to; circumstances equally favourable to the duration of ships, and to their swift sailing; it is neat, much lighter than lead, or even the thinnest sheathing of boards, and lasts almost as long as the ship can be kept afloat. The first trial was made on the *Alarm*, one of the king's ships at Woolwich; and it soon came into general use, not only in the navy but also in the merchants' service.

SLIDING KEELS. In 1790 a very considerable improvement, which unites the opposite advantages of flat and sharp built vessels, was introduced by Captain Schank of the royal navy. It consists in making three wells, or water-tight openings, from the bottom up to the deck in the middle of the vessel, wherein frames of plank, fitted to act as moveable partial keels, are let down under the bottom as occasion requires. When the vessel is on a wind, all the three are let down; and they may be lowered more or less according to the judgment of the commander, in order to assist the helm or gain the wind; when she is tacking or lying to, only the headmost is let down; when wearing, or scudding in a gale of wind, only the after one; and they are all hove close up, when she goes before the wind, or has occasion to go over a shoal. These keels are of eminent use in going about, as the vessel loses no way: and she may be steered by them very correctly without the use of the rudder; a matter of prodigious importance, when the rudder happens to be carried away. Captain Schank having tried the principle of his sliding, or dropping, keels, upon boats in the year 1774 at Boston in New England, and in 1789 at Depford, a cutter of twelve guns was built under his direction, which was found fully to possess all the advantages expected from it; and many vessels have since been built for government on the same principle. It is the opinion of good judges, that the same principle, if applied in building vessels for the merchants' service, would be of very great utility, especially to coasters, which have occasion to be much in shallow water, and to go over shoals, and also to vessels carrying grain and other cargoes liable to shift. Such vessels would also be of great service in navigating the deeper canals, which extend from sea to sea.

GUN BOATS. The same officer in 1798 produced a plan for enabling every boat belonging to a merchant vessel, every river-lighter, barge, scow, and keel, to carry one great gun, to be fired in every direction by means of a slide reaching from stem to stern of the boat. In case of a number of merchant vessels being attacked by a privateer in light winds or a calm, the fleet of boats, armed in this manner, which they could fit out against her in twenty minutes, would have a great

advantage in moving more rapidly with their light oars than she could with her heavy sweeps, and could choose their point of attack with such effect as to make her glad to escape from such a swarm of unexpectedly powerful antagonists.

DISCOVERY OF THE LONGITUDE. In 1714, on the petition of Mr. Whiston and Mr. Ditton, the British parliament passed an act for providing a public reward for the discovery of the longitude at sea. The preamble observes, "It is well known by all that are acquainted with navigation, that nothing is so much wanted and desired at sea as the discovery of the longitude, for the safety and quickness of voyages, the preservation of ships and lives of men; and whereas in the judgment of able mathematicians and navigators, several methods have been discovered, true in theory, though very difficult in practice, some of which, there is reason to expect, may be capable of improvement, some already discovered may be proposed to the public, and others may be invented hereafter. And whereas such discovery would be of particular advantage to the trade of Great Britain, and very much for the honour of this kingdom; but, besides the great difficulty of the thing itself, partly for the want of some public reward as an encouragement, and partly for want of money, necessary for trials and experiments, no such inventions or proposals, hitherto made, have been brought to perfection." It was therefore enacted, that the lord high admiral, the speaker of the House of Commons, and sundry other great officers, by virtue of their offices, and several other persons, should be commissioners for trying and judging of all proposals, experiments and improvements, relating to the longitude; who, being satisfied of the probability of such discovery, should certify it to the commissioners of the navy, who were empowered to issue a bill for any sum, not exceeding 2000*l.*, which the commissioners for the longitude should think necessary for making the experiments. And the ultimate reward offered to the discoverer of the longitude, if he determines it to one degree, or sixty geographical miles, was 10,000*l.*, if to two thirds of a degree, 15,000*l.*, and if to half a degree 20,000*l.* Five hundred pounds, part of the sum of 2,000*l.*, had been paid by the commissioners to Mr. William Whiston, for surveying and determining the longitude and latitude of the chief ports and headlands on the coasts of Great Britain and Ireland, and 1250*l.* to Mr. John Harrison, for certain experiments, warranted by the commissioners, when, in 1753, an act was passed empowering them to disburse the further sum of 2000*l.*, and adding to the former list of commissioners, the governor of Greenwich hospital, the judge of the admiralty court, the secretaries of the treasury, the

secretary of the admiralty board, and the comptroller of the navy. The perfection of a discovery so difficult could not however be expected but from experiments of a nature too expensive for mere men of letters, unaided by public bounty, to engage in, and therefore, in 1762, a new statute enabled the commissioners to bestow a sum not exceeding 2000*l.* to any person, whose proposal they should think worthy of a trial.

CHRONOMETERS. The greatest effort toward completing the required discovery was made by Mr. John Harrison, the inventor of the chronometer, of which, and the longitude itself, the following account is given. The many improvements of the instruments used for taking the altitude of the sun, had made it perfectly easy for navigators to ascertain their latitude very exactly, every day that the sun is visible; but for the longitude they were obliged to depend on the accuracy of the course steered, and the mensuration of the ship's velocity by an instrument called the log. These are both liable to much uncertainty; from the indeterminate allowance for currents and lee-way, which must depend on the judgment or conjecture of the navigator; from an erroneous construction of the compass; from erroneous measurement of the log line, erroneous quantity of sand in the half-minute glass, inexperience of the person heaving the log, swell of the sea, variation of the ship's rate of going between the stated times of heaving the log, and various other causes. Hence a method of ascertaining the longitude, with the same degree of accuracy which is attainable in the latitude, had for ages been the grand desideratum in navigation; and since the year 1714, when the parliament offered a reward of 20,000*l.* for the best method of ascertaining the longitude at sea, many schemes had been devised, but all to little or no purpose, as going generally upon wrong principles, till Mr. John Harrison arose. It is evident, that as the globe revolves round its axis in twenty-four hours, every one of the 360 degrees of longitude must be equal to four minutes of time; and consequently, that if a ship has sailed from any given point, where the sun was in the zenith, (or in his meridional altitude,) and next day, when the sun is in the zenith, it is found by a watch, which goes exactly true, that it is four minutes after twelve, the ship has made one degree of difference of longitude to the westward; or, if the watch wants four minutes of twelve, one degree of east longitude; and so in proportion for any greater or less difference: hence nothing more is required to make us sure of the longitude than a watch perfectly true. But watches, like all other productions of human art, are liable to error, and are, moreover, in a considerable degree affected by the changes of atmosphere. To the correction of these defects Mr. Harrison devoted the assiduous

studies of a long life; and he produced; what is probably, in principle, the nearest approach that ever will be made by human ingenuity to the great object of the wishes of navigators and philosophers, a *chronometer* or time-keeper, which in two voyages made by his son to the West Indies, under the direction of the commissioners, was found to determine the longitude at sea with an accuracy beyond the nicest exactness required by the act of parliament, as appeared by certificates from the captain and officers of the ship, which was appointed to attend him on the trial, and also from the governor of Jamaica. The board of longitude thereupon paid Mr. Harrison 1500*l.*, and parliament, the next year, ordered 5000*l.* to be paid to him, on condition that he should lay open to the public the principles on which his time-keeper was constructed: and they promised to pay him the remainder of the 20,000*l.*, if on further trials, in the course of four years, it should still be found to ascertain the longitude within the required limits of exactness; during which period no other artist should be permitted to enter into competition with him in the same line of discovery. At different times afterward, Mr. Harrison obtained payment of the remainder of the 20,000*l.* Time-keepers have ever since been made on his principles with great success, and also with improvements by several watch-makers. The general use of them on board the navy, the East India ships, and many private merchant ships, has been productive of this important advantage to navigation, that many in the present race of navigators are much better acquainted with the principles on which the science is founded, than their predecessors generally were, many of whom knew nothing more than merely how to use the instruments, apply the rules, and extract numbers from the tables, which men of science had constructed for their use, without ever inquiring why those instruments, rules and tables, were so constructed. To the use of time-keepers in the hands of men of science we are also indebted for the great improvements lately made in the knowledge of currents in the ocean, whereof we may soon expect accurate charts describing their course and velocity as correctly as the soundings and set of the tide are marked in the present charts of harbours and bays. Thus does Harrison's invention constitute a new and splendid era in the history of navigation.

OTHER PREMIUMS. Many other premiums have been given, by the board of longitude, as one of 500*l.* in 1762, to Dr. Irwin, for the invention of a *marine chair*, which would enable the navigator to take observations of the heavenly bodies during a storm, and for *lunar tables* constructed by him on the principles of Sir Isaac Newton; one of 1000*l.* in the same year to Mr. Witchell for a *marine table* to facilitate the calculation of longitude

gitude by the *lunar method*. This mode of observation was carried to perfection in 1775, by Messrs. Turnbull and Latimer, who invented an instrument for ascertaining the longitude, by measuring the distance of the moon from the sun, by the aid of which the longitude may be determined at sea at all times when the observation can be made. Many acts of parliament were framed for continuing the authorities of this board, and extending their discretionary power of offering rewards, until the year 1790, when the legislature empowered the commissioners of the navy to give rewards not exceeding 5000*l.* to such as the board of longitude should at any time certify to have made any useful discovery in the science of the longitude, or any other improvement in navigation.

MAKING SEA WATER FRESH. Among the projects for the benefit of the navy which parliament judged worthy of reward, was one for this purpose by Dr. Charles Irving, for which in 1772 he received 500*l.*

VICTUALLING THE NAVY. In the early period of naval establishment, this important branch was, like almost every other, managed by temporary arrangements, or by the sudden exercise of an undefined prerogative. In the indenture already noticed between Henry VIII. and Sir Edward Howard, it was expressly provided that the king should victual the fleet at his own cost; in the reign of James I. 1622, a regular contract was entered into for supply of the navy, the daily allowances to each man being specified, the facilities allowed to the contractors, and the sum paid for the provision of each man, which was, in harbour seven-pence halfpenny, and at sea eight-pence a day.

VICTUALLING OFFICE. In those times, when the fleet was upon a small scale, the commissioners of the navy, in addition to other weighty concerns, managed also those of the victuallings; but, in the year 1683, the latter department seems to have been separated from the navy board, and constituted a distinct but subordinate establishment; one of the members of that board being styled comptroller of the victualling accounts. At that period the board of victualling consisted of four commissioners, who were dismissed in 1689, and five others appointed in their place. In 1704, two commissioners were added to the number. Instructions were given to them for their conduct at different times. Each commissioner, according to these regulations, took the chair in rotation, there having been no precedence fixed, either according to their appointment, or to their offices, until the third of November, 1784, when the lords of the admiralty directed that the commissioner who superintends the branch of accomptant for cash, shall preside at the board: and that the other members shall take precedence from their respective

pective departments in the following order, viz. department of accomptant for cash, of accomptant for stores, hoy-taker, brew-house, cutting-house, bake-house, cooperage. The commissioners are appointed by letters patent, and receive instructions from the admiralty for the superintendence of the departments committed to their care, and for the regulation of their general conduct as members of the board.

The business of the victualling office is, to provide, either by contract or otherwise, all the provisions, and also certain stores required for his Majesty's navy; arranging and distributing the whole to the several ports at home and abroad, as the service may require; to take care that the different provisions and stores, when so issued, be properly charged to the agents, store-keepers, purfers, masters of transports, or others to whom they were issued; and to compel the respective parties to pass timely and regular accounts; also to take care that all onal arising from articles manufactured, be properly disposed of, all old stores sold to the best advantage, and the proceeds duly accounted for; to attend to the various checks and regulations which have been instituted for the security of the public; with many other important objects.

The established articles of victualling used in the navy, are biscuit, beer, beef, pork, peas, oatmeal, butter, cheese, vinegar and bags, or the materials, such as wheat, malt, hops, oats, oxen, hogs, staves, and hoops; from which biscuit, beer, oatmeal, salt beef, salt pork, and casks are manufactured in the store-houses at Deptford, and in other places. In time of war, large quantities of each species of provisions are sent abroad, as also some extra articles, such as four crout, essence of malt, molasses, and pot barley. For the performance of such extensive and important services, it has been found necessary to constitute permanent establishments at Deptford, Chatham, Dover, Portsmouth, Plymouth and Gibraltar; at each of which places there are regular and subordinate offices. Agents are also appointed occasionally for the like purposes, upon various parts of the coasts of Great Britain and Ireland, and also at foreign stations in the West Indies, America, India, &c.; but notwithstanding the appointments just mentioned, recourse is frequently had to contracts for the victualling of his Majesty's ships on different stations, both at home and abroad; and the commanding officers of squadrons on detached services deem it necessary to appoint agents for securing supplies of provisions and victualling stores; such supplies are also often provided by purfers of single ships, touching at ports where there is neither a contractor nor agent.

For the purpose of enabling the board of victualling to execute the comprehensive and important duties which have been already stated,

stated, store houses and other conveniences were attached to the office on Tower hill, and similar receptacles also provided in other situations, not only for containing such provision and stores as had been already manufactured, but also for the manufacturing of such articles as might be found necessary, from the materials purchased by the board. The advantages resulting from those establishments have been so considerable as to render buildings on a much larger scale necessary; and accordingly other erections have been constructed at Deptford; and a canal into the centre of them has been proposed. The stores at Deptford are connected with and make part of the victualling office of London; and the commissioners attend at Deptford from time to time, for the purpose of superintending the business of their respective departments; a considerable portion of which must be transacted at that place. The entire system of victualling accounts with all its numerous and subordinate branches and connexions, as well foreign as domestic, after passing through many previous checks and forms, finally centres in London in the two departments of the accomptant for cash, and the accomptant for stores, where all vouchers, certificates, bills, accounts and affidavits, undergo further checks, and are submitted to every degree of examination which the nature of the case will admit: every part also of the business transacted in the separate departments of the other commissioners must be brought ultimately to those offices; consequently the accomptant for cash can, at all times, furnish particulars of monies received and paid, and what sums are due to and from the crown, under separate and distinct heads; and the accomptant for stores can furnish particulars of provisions and stores received, issued, and which remain; together with the names of the several parties who originally delivered the same, according to contract or otherwise; and also of those officers or persons who are respectively charged or discharged for the provisions and stores in question. And it is from those materials, furnished to the accomptant for cash, with the assistance of other documents in his possession, that he is enabled to form the estimates for victualling the fleet.

All officers and chief clerks are appointed by warrant from the admiralty, and the inferior clerks by the commissioner who superintends the respective branch; the officers in general are furnished with instructions for the regulation of their conduct in the department to which they belong.

In every branch of the victualling, where money is impressed to pay salaries, wages or contingencies, or where money is received by any officer for the sale of provisions, old stores, &c. the accounts are not only confirmed by regular vouchers and certificates.

certificates, but likewise 'by the oath of the party; purporting that the money has been duly expended or accounted for, agreeably to the statement of particulars which he has exhibited. Security is required from many, although not from all, the officers, employed under the board.

The following is an outline of the principal duties belonging to each officer.

The *First Commissioner* has under his superintendence the department of accomptant for cash, where a daily register is kept of all the victualling bills; and where accounts undergo an examination, and bills are made out, when vouchers and explanations are satisfactory: also the departments for examining and stating of imprest accounts, for keeping a charge on the treasurer, and for paying short allowance money, which three departments, though each under the direction of a separate chief clerk, are nevertheless branches of the department of the accomptant, for cash, to whom consequently they are subordinate. The same commissioner also superintends the offices of the surveyor, and clerk of the cheque, the first of which is for drawing plans, and forming estimates, and reporting on the materials and rates of work done, and the latter is for mustering the workmen of the yard, and attending the receipts and surveys of provisions and stores.

Under the *Second Commissioner* are comprehended the department of secretary, where, besides the ordinary duties, the important one of receiving tenders and drawing up contracts is transacted, and the department of accomptant for stores, where various books are kept, which shew, at any period, the state of provisions, &c. in store, and the expenditure for the same: also the department for keeping a charge on pursers, and of clerks of the issues, the duties of which are implied by their respective titles.

The *Third Commissioner* has under his direction the department of Hoy-taker, whose duty it is to examine, in conjunction with other principal officers employed by the board, the tonnage and condition of vessels tendered upon freight, or otherwise, and to report upon every particular respecting them previous to their being hired; to attend the loading and unloading of provisions, and other things issued for, or returning from ships, transports, and victuallers, and to keep accounts thereof, and to superintend the hoys and craft belonging to the victualling service.

The other commissioners superintend respectively; the fourth, the brewing house; the fifth the cutting-house; the sixth the bake-house; and the seventh the cooperage; which departments need no description further than to state that great variety of checks are adopted in each to secure the due performance of contracts,

to prevent any waste or embezzlement of the articles in hand, to insure the regular adjustment of accounts, and generally to prevent the abuses, to which such departments would be liable from the nature of their business.

THE OFFICE. The business of the victualling office, so far as relates to orders, warrants and instructions, is now transacted in apartments devoted to that purpose in Somerset House. The old victualling office is on Tower hill. The site was formerly occupied by an abbey church, consecrated by Edward III. in the 25th year of his reign, to St. Mary of the Graces, and inhabited by monks of the Cistercian order, who obtained large possessions in various counties. After the reformation, the monastery was pulled down, and slaughter houses, store houses, and other conveniences erected for the express purpose of supplying his majesty's navy, and for those purposes it is still used by the contractors, proper offices being established by government for the requisite works and attendants.

DUTY AT OUT PORTS. Most of the branches on the establishment at *Deptford* are different from the victualling offices at Portsmouth, Plymouth, Chatham, and Dover; being considered as appendages to the special duty of the commissioners in London; and the chief officers communicate with those commissioners individually, with respect to such affairs as relate to their respective departments. At Deptford, however, are stationed an agent victualler, with three established clerks under him, and a store-keeper, with one extra clerk. The office of the *agent victualler* at Deptford, although without the extensive controul or trust which is reposed in similar offices at the out-ports, is nevertheless of great importance, arising from the very superior extent and magnitude of the transactions at this place.

Next to Deptford, in point of importance, is *Portsmouth*. The articles purchased at this port are wheat, malt, coals, candles, and sundry species of small stores; and contracts are frequently made by order of the board, for wheat and malt to be delivered at Plymouth. The articles received from Deptford are principally, salt beef and pork, peas, oatmeal, butter, cheese, vinegar, and hops; some of which, such as wheat, malt, and hops, are afterwards manufactured in the same manner as at Deptford. The contract for fresh beef for use at Portsmouth, is always made with persons in London, but the oxen are slaughtered at Portsmouth at the charge of the contractor, who delivers the four quarters, when cold, for which he is paid by weight, the tongue being given in, and every other part of the offal belonging to the contractor. Some of the tongues are distributed among the admirals and captains, according to a regulated proportion; the remainder are sold, and the money arising from such sale carried

ried to the credit of the offal account. In the same account is also included the money received for bran, grains, yeast, decayed provisions, old staves, hoops, and all stores sold, and which is regularly paid to the treasurer of the navy, pursuant to the instructions received from the board for that purpose.

At each of the three out-ports there is an agent victualler, a store-keeper, and a clerk of the cheque, with clerks and other inferior persons. At Plymouth and Portsmouth, there are likewise a master cooper and a master brewer; and at the latter place a master miller; but the same establishment is unnecessary at Chatham, on account of its vicinity to Deptford.

MAKING OUT AND PASSING ACCOUNTS. The agent victualler, store-keeper and clerk of the cheque or persons deputed from their respective departments, must all join, in order to carry through any transaction whatever; so that they are mutual checks on each other, like the principal officers of a dock-yard. Every article of provision, and stores, received by the officers at the several out-ports, is charged against them in accounts kept at London by the accountant for stores; and all provisions and stores issued by such officers, are placed to their credit respectively in the same account. Those accounts are afterwards checked, and examined in the office of the chief clerk for bringing up the accounts of stores in arrear. The bills made out by the agent victualler at the out ports, and certified by him, the store-keeper, and the clerk of the cheque, are received by the accountant for cash, and afterwards pass through the same forms as bills which are made out in London. Every agent victualler keeps one general account of cash; another stating all monies received for provisions, &c. sold; both which are sent to and examined by the accountant for cash. A third account, stating money impressed to such agent victualler, is also transmitted to and examined by the chief clerk for examining and stating of imprest accounts. The pay-lists for wages are received by the clerk of the cheque, and those for short allowance money in the office of that name. All the above accounts are transmitted to London once in every three months, upon oath, and being corroborated by other documents, they collectively form a complete system of connexion between the board of victualling in London, and the several subordinate establishments at the out-ports, under every check and security which the public service can render necessary; provided that the execution of the complicated duties of that extensive department, as well in the superintendence as the detail, be performed with fidelity and precision by the persons intrusted.

EXPENCE OF VICTUALLING. The expence of victualling his majesty's fleet is provided for in the following manner; out of the

the sum per month of twenty-eight days, which is voted by parliament to each man for the service of the navy, a certain portion per month is appropriated to the victualling; a further sum is likewise voted, under the head of harbour victuals, which is intended to defray the expence of victualling the ships in ordinary, and the officers and servants employed therein, also those employed in navy transports, small yachts, &c. The amount of those sums collectively is never adequate to the whole expence of the victualling establishment; extra services constantly occur, and old balances are frequently demanded, and paid, although not provided for in the estimate which is laid before parliament; and an additional charge likewise falls on this department, in consequence of the high prices paid for provisions or stores upon foreign stations, with other incidental expences, which are more or less considerable, according to circumstances, and cannot be enumerated. Besides the fund arising from the money voted by parliament, another fund is formed of monies produced from the sale of offal, decayed provisions, old stores, &c. to which are added, sums repaid to clear imprests, debts remaining due to government upon balancing the accounts with purfers, &c. and in general all monies whatsoever which are received by the board of victualling, except what is received directly from the exchequer.

MANNING THE NAVY. In ancient times, as already has been shewn, the sovereign by his prerogative enforced the service both of ships and men when requisite, and subsequently both were supplied by the kingdom at large on the king's demand. The principle on which this prerogative was founded probably gave birth to the practice which has been at all times resorted to by government as a great mean of procuring men for the navy, that of inforcing seamen to serve, or, as it is generally termed impressing, or pressing them.

THE IMPRESS SERVICE. The unpopularity which must ever attend a system where absolute force is employed on persons guilty of no offence to make them perform services to which they have an utter repugnance, and which are also perhaps prejudicial to their interests, has occasioned many warm discussions, on the legality of the practice of pressing seamen. Those who oppose it reason chiefly on general principles, and from them, arguments of great force and cogency are derived; but on the other side, every lawyer, historian, and antiquary, who has well investigated the origin and progress of the British navy, agrees in the legality of the prerogative, according to the usages of the most ancient times. Nor will they who duly consider the necessity of adopting sudden and vigorous measures for rendering available the great national defence in times of war, be too ready,

ready, even in argument, to rely on principles which can never be reduced to practice, and against which the writings of all lawyers, and the declarations of all statesmen may be almost uniformly cited. Among the former may be reckoned Sir Michael Foster, Lord Mansfield and Mr. Justice Blackstone, and as a splendid instance of the latter, the earl of Chatham, who, while he opposed government, declared, in 1770, his firm conviction that this mode of obtaining men for the navy was legal, and that those who opposed it, were actuated by faction, and guilty of an endeavour to cut off the right hand of the community. Edward III. in 1337, expressly empowered his admirals to chuse as many men as they thought necessary for manning the fleet, and to seize and imprison those who might be unwilling to go on board; the statute 2d Richard II. c. 4. speaks of mariners being arrested and retained for the king's service, as of a thing well known and practised without dispute; and provides a remedy against their running away; and in 1481, Edward IV. preparing a navy against Scotland, empowered eleven commanders to press mariners for manning their vessels.

REGULATIONS. This most unpleasant and difficult, though indispensable, service is reduced to regularity and method by the division of the united kingdom into twenty-six stations, to the officers at which the press warrants are directed. At each station is a captain, and generally two (but on some more, and on one or two fewer) lieutenants, who have under them bodies of seamen, called gangs, or generally press-gangs. In some places; in the city of London in particular, their warrants cannot be executed until sanctioned by the indorsed permission of the civil magistrates, whose signature is called backing the warrant, and the attendance of a peace officer. The officers and men on this duty have an extraordinary pay. The lieutenants attend with the gangs, and place the men whom they impress on board a vessel prepared for the purpose, and called a tender, where they undergo an examination before the regulating captain, and unless they can shew sufficient reason to obtain a release, they are consigned to such of the king's ships as are in want of hands, and compelled to serve during the residue of the war, or until discharged. The accounts of every lieutenant on the impress service are audited monthly at the admiralty: they contain the sums expended on the men impressed, and their number; also the amount of the pay and incidental expences of himself and gang. The regulating captain of each lieutenant makes oath as to the validity of his account, and passes it at the admiralty.

EXEMPTIONS AND REGULATIONS. A striking hardship which attends the practice of pressing is apparent in the situation of those seamen, who, after making long voyages in the service of
 merchants,

merchants, are, the moment they come in sight of shore, compelled to renew their labours on board a king's ship. Another evil is, that sometimes it is found necessary to impress landmen as well as sailors, and in these cases serious affrays have arisen, in which even lives have been lost. In order to prevent these calamities, the legislature has framed some provisions, and occasional attempts have been made to substitute means less harsh, for supplying the navy with hands. By several statutes, any waterman, who uses the river Thames, hiding himself during the execution of any commission of pressing for the king's service, is liable to heavy penalties; no fisherman shall be taken by royal commission to serve as a mariner, but the commission shall be first brought to two justices of the peace, inhabiting near the sea coast where the mariners are to be taken, to the intent that the justices may chuse out, and return for service, the number of able-bodied men mentioned in the commission; especial protections are allowed to seamen in particular circumstances to prevent them from being impressed; and ferrymen are said to be privileged by the common law. These protections are however occasionally superseded in cases of urgent necessity, by acts of parliament, and discretionary protections granted by the admiralty, are revoked without notice to the parties.

OTHER MEANS OF MANNING THE NAVY. One of the means tried for superseding pressing was a scheme in the middle of king William's reign, for registering 30,000 men for a constant and regular supply of the king's fleet; with great privileges to the registered men, and, on the other hand, heavy penalties in case of their non-appearance when called for: but this registry, being judged to be ineffectual as well as oppressive, was abolished by statute 9th Anne, c. 21. In 1795 acts were passed requiring the several counties in England and Wales to furnish men in stated proportions, amounting in the whole to 9859, and those in Scotland to 1814, the number being levied on each according to the valued rent, and the men raised by a tax similar to a poor rate, but this experiment was never renewed. In the same year, an embargo was laid on all British shipping in the ports of Great Britain, and a requisition made from the owners of all vessels, excepting those belonging to the king and the royal family, and craft used only in rivers and canals, to furnish able-bodied men for the navy, (one able seaman being accepted as equivalent to two able-bodied men) in certain proportions—amounting in the whole to 19,867 men. This last operation was, indeed, little different from pressing, except that it allowed the masters of ships to select from their own crews the men they were least inclined to keep; and the following measure was in fact a land press, with the reservation only, that the persons

exposed to it must be guilty, or at least reasonably suspected of being injurious to society. The justices of peace and magistrates of cities and towns, were authorised and required to send on board the navy, all able-bodied idle and disorderly persons, exercising no lawful employment, and not having some substance sufficient for their support and maintenance, all offenders, coming under the description of rogues and vagabonds, smugglers, and embezzlers of naval stores, between the ages of sixteen and sixty, unless they were intitled to vote for the election of members of parliament.

A mode more eligible than any of these, and which, it is to be regretted, is not always sufficiently productive, is that pursued in every war, of giving bounties to volunteer seamen, and that established by act of parliament, of allowing them certain advantages in pay and prize money, over those whose reluctance is only overcome by force. As an encouragement to foreign seamen to enter into the British service, they are declared, after being two years on board any man of war, merchantman, or privateer, to become *ipso facto* naturalized. Parishes, too, may bind out poor boys apprentices to masters of merchantmen, who shall be protected from impressing for the first three years; and if they are impressed afterwards, the master shall be allowed their wages.

NAVIGATION ACT. A law which has contributed more than any other to the superiority of the British navy, although at first designed only for the promotion of commerce, is that known under the name of the Navigation Act, for as it always provides employ for a great number of British seamen, it facilitates, in course, the manning of the royal navy. The act now in force owes its origin to Cromwell, and hence some continental politicians, hostile to England, have been led to describe it as the offspring of injustice, bred in the mind of a gloomy and fanatical usurper. It may however be proper to observe, that the undoubted public right vested in the sovereign power, of determining in what manner the commerce of a nation shall be carried on, was not first exercised in England in the days of Cromwell, but its early traces are found in the regulations of a legitimate sovereign, whose court was, during his prosperity, singularly brilliant, and whose mildness and carelessness were among the chief causes of his melancholy fate. Richard II. in the fifth year of his reign, enacted, that none of his subjects should ship any merchandize, outward or homeward, except in ships of the king's allegiance, on penalty of forfeiture of vessel and cargo; and this was the first navigation act passed by the parliament of England. Acts of the same import, but less general in the prohibition, were framed in succeeding reigns, even to that of Charles I. and almost every statute contained a

recital of the decay of commerce, the disuse of British shipping, and the want of mariners occasioned by the incroachments of foreigners on the carrying trade. The statute passed by the Rump Parliament in 1651, was revived and improved nine years afterward, on the restoration of Charles II. but as it chiefly relates to commercial affairs, its substance will be stated in another page, although in this place it was necessary to mention its effect on the navy.

NAVAL ACADEMY. Nor does the supply of the fleet rest on temporary exertion or casual inclination alone, an establishment being formed at Portsmouth under the name of an academy, for the express purpose of instructing youth in all the branches of science requisite for the education of a good seaman. The scene of their instruction affords them every practical advantage, excellent masters are provided, and a ship for practice is kept within the premises.

MARINE SOCIETY. Another source from which the navy derives considerable supplies arises from the union of patriotism with charity, in an institution called the Marine Society. This admirable establishment was projected in 1756, by Jonas Hanway, a man whose name is never pronounced in England but with associated ideas of philanthropy and active benevolence. The plan was of extreme simplicity; it consisted in a subscription for feeding, cloathing, preparing and fitting out for the sea service, poor and destitute boys. Liberal donations and bequests perfected the establishment, and at an early period, Mr. Hickes, a merchant in Hamburgh, bequeathed a legacy of 20,000*l.*, being his whole fortune. In 1773, the marine society, the benefit of which had been fully ascertained, was incorporated by act of parliament. The boys placed out as apprentices by them were exempted from being impressed while under eighteen years of age, and privileged to exercise any trade in any part of Great Britain or Ireland. The officers of the society are a president and six vice-presidents. Annual subscribers of two guineas, or donors of twenty, are stiled governors. There are also belonging to the society, a chaplain, a surgeon, an apothecary, a secretary, and a messenger. The office is in Bishopsgate Street, London.

GOVERNMENT OF THE NAVY. In ancient times, when ships were collected in a hasty manner, or furnished by different ports, they were subject to no general regulation, but having once fallen into the possession of fighting men, were considered as the means of predatory adventure, or, according to the passions or prejudices of those who furnished or happened to command them, employed in enterprizes of civil warfare. Thus in the 13th century, the mariners of the Cinque Ports carried on, in

defiance of royal authority, a piratical warfare against all the world, and in the middle of the same century, the people of Winchelsea, enraged that those of Yarmouth had excelled them in building a superb ship, attacked the vessel, and murdered several of the crew; nor were these single, or even rare instances of such piratical and barbarous enterprizes. The first appearance of a better naval system occurs in the reign of Edward I., who preparing, in 1292, for his intended war against France, divided his navy into three fleets, and appointed three admirals, viz John of Botetourt admiral of the fleet of Yarmouth, and the east coast; William of Leybourne, of the Portsmouth division; and an officer (not named) of Irish birth commanded the ships of the west coast and Ireland. This is believed to be the earliest appearance in England of the title of admiral, which had been some time before adopted, in imitation of the Saracens, by the maritime states of Italy, for the commander of a fleet. It can hardly be supposed that a nation once acquainted with the benefit of order will desist from enforcing it if possible; accordingly from that period the navy of England continued improving in its internal regulations, until it has become as complete as human judgment can devise in the appointment and perfection of its officers, and the discipline of the men.

ADMIRALS. The fleet consists of three squadrons distinguished by the colours of their several flags; and the principal commanders bear each the title of admiral of his squadron; but the first admiral of the red commands in chief the whole fleet, and is called admiral of the fleet. Under the admirals are vice-admirals and rear-admirals. The style of admiral of the red had been for many years disused, but was restored in 1805, and in 1806 there were in the British fleet, of the red, twenty-two admirals, including the admiral of the fleet, seventeen vice and eighteen rear-admirals; of the white, fifteen admirals, fifteen vice and nineteen rear-admirals; the blue had eighteen admirals, eighteen vice and twenty rear-admirals.

THEIR DUTY. The flag officer, or commander in chief of a fleet or squadron, is to inform the secretary of the admiralty of his proceedings; and the other public offices of all matters relating to them. He is to exercise his squadron frequently; and to visit the ships under his command. In directing naval officers abroad, he is to conform as much as possible to the standing rules of the navy. He is not to be concerned in purchasing stores or provisions abroad, without an absolute necessity, and then not to have any private interest in it.

PAY. Flag officers commence pay from the date of their commissions, or orders to repair to their squadrons; and continue
in

in pay to the day they strike their flag by order. Their stipend is,

	Pay.			Half-pay.		
	£.	s.	d.	£.	s.	d.
Admiral and commander in chief } of the fleet - per day }	5	0	0	3	0	0
An admiral - - -	3	10	0	2	0	0
A vice-admiral - - -	2	10	0	1	10	0
A rear-admiral - - -	1	15	0	1	2	6

Admirals and vice-admirals commanding in chief, are also allowed for table-money twenty shillings per day.

Each flag officer is allowed to have a *secretary*, with a clerk under him, an appointment of which the utility is too obvious to require explanation. The pay of these persons is as follows:

	Per annum.		
	£.	s.	d.
Secretary of an admiral of the fleet -	500	0	0
Secretary of an admiral of the white, or blue, being commander in chief - -	400	0	0
Secretary of a vice or rear-admiral, being commander in chief, and of a commodore having a captain under him - -	300	0	0
Secretary to a flag officer, and to a commo- dore, with captains under them, not com- manding in chief - - -	150	0	0
Each clerk to a secretary - - -	50	0	0

COMMODORE. This title, although frequently used in conversation and in print, does not indicate any established rank in the navy, the person so distinguished being only a temporary commander without a commission, but proceeding on the custom of the navy, by which the senior commander of a squadron is styled commodore, leader or commander in chief, and is thereby intitled to some honours, and sometimes to more pay than a private captain.

CAPTAINS. The rank in fact next to rear admiral, is that of captain, in which there are several degrees, according to the rate of the ship consigned to their command, those who are recently advanced from the rank of lieutenant, not being at first intrusted with the government of a ship of large size, but employed in those of an inferior rate; and in strictness termed only *masters and commanders*. In this situation, they are not intitled to half pay. When promoted to a superior vessel they are rated as *post captains*, and become possessed of all the privileges and emoluments due to their rank.

DUTY. The duties of a captain are numerous and active, requiring a sound and clear understanding, and a steady undeviating attention. Some of the principal are comprized in the following articles. To visit the ship he is appointed to command. To send accounts weekly, or oftener if necessary, to the admiralty and navy offices, of the progress made in fitting her out, and her circumstances. Not to lye out of the ship without leave from the admiralty, or his commander in chief. To be present when stores come on board, of which his clerk is to take account. To be a cheque on his officers and audit their accounts. To enter none but able men, and not to exceed his complement. To muster the ship's company, once a week, in ports, and to do the same at sea, without using any fraud in his musters. To take care of the ship's stores, and suffer none to be misapplied or wasted. To make no alteration in any part of his ship. To set up his rigging at seasonable times, and to be very careful to favour his masts. Before any rigging or stores are cast, he is to order a regular survey thereof to be taken. To see the ship kept clean, and the air let into the hold, as frequently as may be. Before the ship proceeds to sea, to examine and rate the ship's company, impartially and without favour; as likewise to make a regulation for quartering the officers and men, and distributing them to the great guns, small arms, rigging, &c; and to discipline the ship's company frequently, in the exercise of the great guns and small arms. To inform the secretary of the admiralty of the officers absent, when the ship is under sailing orders, and the cause of their absence. To keep a journal, according to a form prescribed, and to send a copy of it, at stated times, to the secretary of the admiralty; and at the expiration of the voyage, to the admiralty and navy offices. To inform the secretary of the admiralty of his proceedings, and the condition of his ship; and to correspond with the proper offices, in whatsoever respectively concerns them. Not to go into any other port, than such as his orders direct him, unless by unavoidable necessity, and then to make no unnecessary stay. To demand English seamen out of foreign ships. Upon the death of any officer to seal up his books and papers, as well public as private, in presence of at least two signing officers. Upon the death, suspension, or removal of any officer, having stores or provisions under his custody, he is to cause an exact survey and inventory to be taken, of the remains of such stores and provisions. When removed himself, he shall shew his original orders which remain unexecuted, to his successor, and leave him attested copies of the same; as likewise leave a complete muster book, and send all his other books and accounts, to the offices they respectively relate to. When removed by commission from one ship

ship to another, he is allowed to carry with him the following number of men including his servants; viz. from a first rate, eighty, a second rate, sixty-five; a third rate, fifty; a fourth rate forty; a fifth rate, twenty; and a sixth rate, ten. In case of shipwreck, or other disaster, by which his ship may perish; he, with his officers and men, are to stay with the remains, as long as may be, and endeavour to save all that is possible. When the ship returns to the port, where she is to be laid up, the captain is to give an exact account of her qualities, to the commissioner of the navy, at the port, and send a duplicate of it to the navy board; and he is then likewise to make up his pay-book, and with his officers, to attend the payment. He is answerable for the conduct of every one in the ship, and for all errors of his clerk; to receive no wages without proper certificates; and to be answerable for all damages occasioned by his neglect or irregularity.

PAY. The pay of a captain is as follows. First rate, 1*l*. Second rate 16*s*. Third rate, 13*s*. Fourth rate, 10*s*. Fifth rate, 10*s*. Sixth rates, 8*s* per day. Fire ships, hospital ships, and prison ships, are paid as fifth rates: sloops, bombs, yachts, &c. are paid as sixth rates. The first captain to an admiral, and commander in chief of the fleet has the pay of a rear admiral. The second captain to the same admiral, and captains to other admirals, have the pay of a captain of a first rate. The captains to vice-admirals have the pay of a second rate; and the captains to rear-admirals the pay of a third rate. But if a vice or rear-admiral serve in a first or second rate, the captain has the proper pay of that rate. Captains commence pay from the date of their commissions, unless they are appointed in the place of an officer removed, who is to enjoy his pay till relieved by his successor. *Captain's half pay.* Fifty of the oldest, 12*s*.; the next seventy-five, 10*s*. and the rest 8*s*. per day. Commanders. Fifty of the oldest 8*s*.; the next one hundred 7*s*.; and the rest 6*s*. 6*d*. per day. Officers on half pay make oath half-yearly, that they hold no employment in the public service at the time; but no oath is required of officers on the superannuated or pension lists.

LIEUTENANTS AND MIDSHIPMEN. Young gentlemen entering into the navy, are generally rated as midshipmen, and, after they have served a proper period in this station, they are, if they can pass the ordeal of a very strict and scientific examination, passed for lieutenants. This stage is, in fact, if the term may be used, the practical apprenticeship of an officer, and perhaps, from the regularity with which it is observed, as much as from any other cause, has arisen the pre-eminence of the British navy. The necessary time of service, previous to passing

for lieutenant, is six years in all, viz. four years as landman, or able volunteer, and two years as midshipman or master's mate. By this regulation no man can aspire, even to subordinate command, who has not learnt his duty by personal service, and the evidence he must give of his ability consists, not merely in having been a certain number of years at sea, or in having learnt by rote a certain series of problems, but in the acquaintance with practice and a judicious intelligence in matters of theory. From this no individual in the navy is exempt; interest, influence, or rank, even that nearest allied to the throne, have never yet infringed, nor probably ever will infringe, this most valuable and essential regulation. Lieutenants are appointed by the board of admiralty, midshipmen generally by the captain.

On the first Wednesday in every month, gentlemen are examined to pass for lieutenants at the navy office; where journals, certificates of service, and registers of age, should be previously left.

DUTY. The principal duties of a lieutenant are, generally, to obey his commander's orders. To muster the watch, and see good order kept in it. Not to change the course of the ship without orders. The lieutenant of the watch is to be informed when boats come, or go off; is to be on the deck in his watch, and is to inform the captain of all irregularities; to see the men at their proper quarters, and that they do their duty, in time of action. To keep a journal, sea-book, &c. and at the end of a voyage, to deliver copies to the admiralty and navy offices. The youngest lieutenant is to exercise the seamen, to be chiefly with them in time of action; and to see the small arms kept in order. The station of some midshipmen is on the quarter deck, of others on the poop; their duty is to mind the braces, to look out, and give about the word of command, from the captain and other superior officers, they also assist on all occasions, both in sailing the ship, and in stowing and rummaging the hold.

PAY. The pay of lieutenants is, when under an admiral, 5*s.* 6*d.*; all others 5*s.* per day, except those commanding prison ships, who have 6*s.* Their pay commences from the date of their commissions, unless appointed in the place of an officer removed, who enjoys his pay till relieved by his successor. A lieutenant, succeeding to the command of a ship, on the death of the captain in foreign parts, receives the pay and allowance of a captain, until he is superseded. They are also allowed sixpence per mile for travelling expences, but only on their first appointment during a war. *Lieutenant's half-pay.* Two hundred of the oldest 5*s.* per day; the three hundred next oldest, 4*s.* 6*d.*; the next five hundred, 4*s.*; the rest 3*s.* 6*d.* *Sub-lieutenants* full pay 4*s.* per day, of this 3*s.* 6*d.* per day is drawn quarterly, the other sixpence

fixpence is receivable at the end of every twelve months, by the delivery of a log book ; no half-pay ; travelling expences allowed as to lieutenants. Midshipmen have pay, per month, in a first rate 2*l.* 10*s.* 6*d.* ; second rate 2*l.* 5*s.* 6*d.* ; third rate 2*l.* 3*s.* ; fourth rate, 1*l.* 19*s.* 3*d.* ; fifth and sixth rates, 1*l.* 15*s.* 6*d.*

Besides these there are subordinate officers, of whom some account is necessary.

MASTERS. No person can serve in this station, unless he has, before his appointment, passed an examination at the Trinity-house. Candidates for passing are required to be above twenty-one years of age ; to have been seven years at sea, and to have been two years as midshipman, master's mate, second master, or acting master ; and to produce certificates from the commanders under whom they have served of sobriety, diligence, and attention to their duty. Such as have not served in the navy must be of the age and time at sea as above, and have been two years as mate, and one year as master, or one year as mate, and two years as master of a square rigged vessel, in the merchant service, and produce certificates of sobriety, &c., from the respective owners or commanders. By his majesty's order in council, of the fifteenth of August, 1805, such persons as shall have acted as masters, and second masters, and pilots, may be considered as eligible to lieutenancies, from meritorious conduct or other causes, although the persons who shall so distinguish themselves, may not have been rated as mate or midshipman, provided they have served six years in the royal navy.

DUTY. The duty of a master is, to repair on board, and obey his commander's orders. To inspect the stores and provisions sent on board ; and when not good to inform the captain or chief officer on board. To take care of the ballast ; and to stow the hold carefully. To see the rigging and stores duly preserved. To navigate the ship, under the directions of his superior officer. To observe the coasts, shoals, &c. When the ship is at anchor, to be watchful that the hawse be kept clear. To be provided with proper instruments, &c. ; and to keep an exact and perfect journal, and other books, to be delivered, when the ship is laid up, to the navy office. To be careful in not signing any accounts, books, lists or tickets, before he has a thorough information of the truth of them. Commanders in chief, having a captain of the fleet on board, have a master under them, independent of the master of the ship, who is to be called the *first master*, and whose duty is to attend to the navigation of the fleet. He must be qualified for, and receives the pay of a first rate.

PAY.

PAY. The full pay per month is ; first rate 12*l.* 12*s.* Second rate 11*l.* 11*s.* Third rate 10*l.* 10*s.* Fourth rate 9*l.* 9*s.* Fifth rate 8*l.* 8*s.* Sixth rate 7*l.* 7*s.* Of brigs and cutters, with complement of more than fifty men, 6*l.* 6*s.* Second master and pilots of gun brigs, &c. 5*l.* 5*s.* The foregoing are allowed a servant, or as compensation for one, 11*l.* 8*s.* 2*d.* per annum. Ships of the line have a second master at 5*l.* 5*s.* but no servant or compensation. *Half Pilotage* is universally allowed to masters for taking the sole charge of a ship or vessel ; the commander being satisfied as to their capacity. A master, to be intitled to half pay, must have been in actual service five years, either as master, or, for the first two years, as midshipman, master's mate, second master, or acting master. The first fifty (qualified for first and second rates) 5*s.* per day. The next fifty (qualified for first and second rates) 4*s.* 6*d.* The next one hundred (qualified for third rates) 4*s.* per day. The next one hundred (qualified for fourth and fifth rates) 3*s.* 6*d.* per day ; those for sixth have 3*s.* No master is permitted in time of war, on any account whatever, to receive half pay during such time as he shall be employed in the merchant service, or in any other occupation, unless absolutely incapable, from infirmity, of serving in the royal navy.

PURSER. To this officer are committed the charge and inspection of the victual and water, and it is also his duty to provide the ship with necessaries, as coals, wood, turnery ware, and candles ; he is allowed to sell tobacco, and some other things to the men, and his office branches out into a vast variety of petty cares and subordinate attentions.

FOOD. Provisions of a good quality are issued to the crew by the purser daily, according to a stated order applying to each day in the week ; and in the modern regulation of king's ships many articles are included which are not so absolutely necessary to subsistence, as conducive to health ; as vegetables, fresh and pickled, tea, wine, spirits, rice, and many other articles.

SHORT ALLOWANCE. Commanders have it in their discretion to shorten the stated allowance, when the service requires it, but must take care, that the men be punctually paid for it ; and no officer is suffered to be at whole allowance, when the men are shortened. In such cases, the captain is to make out short allowance lists. In foreign parts the short allowance money is to be paid, every three months, by money taken up by the purser, on bills of exchange for that end. Commanders in chief, or captains when alone, are to attest those bills, and to controul the payment ; and the surplus of any such money.

is to go to the next payment. Purfers are to send the lists home. The ship's company is to be paid according to sterling money, and to have the benefit of the exchange. The buying of short allowance money is strictly forbidden.

COOK. The cook too, is mentioned among the officers, and his duty, besides that expressed in the title of his place, extends to the preservation of the tubs and other things connected with his duty.

OTHER OFFICERS. There are several other officers, whose duties are expressed by their names, or too minute for description, as the boatswain and his mates, the chaplain; the gunners; the schoolmaster who instructs the volunteers, and other youth of the ship, in reading, writing, arithmetic, and the study of navigation; the masters at arms and the carpenters; these are appointed by the admiralty. There are also sail-makers, and caulkers, who are appointed by the navy board; armourers, armourers mates, and gunsmiths, who receive their appointments from the board of ordnance.

PHYSICIANS AND SURGEONS. The care of the sick and wounded on board ship, occupies the most serious attention of government. The duty of the physician is to reside in the hospital ship, where there is any, or such other as the commander in chief shall appoint. To visit the sick in the ships of the squadron. To inspect the chests of the surgeons; to observe the admiral's orders, and demand no fees from his patients. By an order in council, dated January 23, 1805, every person appointed physician to a fleet or hospital, must have served as surgeon at least five years.

PAY. On first appointment, 2*rs.* per day; half pay 1*os.* 6*d.* Having served three years as physician, pay 2*l.* 2*s.* per day; half pay 1*l.* 1*s.* Lodging money when a residence is not appointed, per week 1*l.* 1*s.*

SURGEONS are appointed after a rigid examination, both in surgery and physic, at Surgeons Hall, Lincoln's Inn Fields, London; and before the commissioners of sick and hurt, from whom they receive their warrants. The distinction of *surgeon's mate* is annulled, but there are on board ships *assistant surgeons*; and in the hospital department, the assistants and assistant dispensers, are called *hospital mates*. The number of assistant surgeons, in first and second rates, is three; in third and fourth rates, two; hospital ships, three; all other ships formerly bearing a surgeon's mate, one. No person is to be appointed an assistant surgeon who is not qualified to serve as surgeon or first assistant.

DUTY. The duty of the surgeon is, to provide himself with instruments, and a chest of medicines, and to have the same
viewed

viewed and approved; as it must be, in like manner, when recruited. To keep sick tickets. To examine the necessaries sent on board for the use of the sick, and to issue them out for relief. Carefully to attend the men under his care, and, in difficult cases, to advise with the physician of the Squadron, where there is any. To inform the captain, every day, of the state of the sick. When patients are sent to the hospitals, he is to transmit an account with them of their distempers, and all other proper circumstances; to take all due and immediate care of the wounded men in an engagement; to keep a day book of his practice, and to deliver journals of it, at the end of the voyage, that it may be examined into.

PAY AND OTHER CIRCUMSTANCES. Surgeons not having actually served six years, per day, 10s. half pay 5s. Those of ships, having served six years in actual service, pay 11s.; half pay 6s. Having served ten years, pay 14s.; half pay 6s. Surgeons of receiving, ship, convalescent, prison, and all other except hospital, ships, employed only in harbour duty, per day 10s.; half pay according to the time of service. Of hospital ships, unless intitled by term of service to a superior rate, pay 15s.; half pay as other surgeons. Surgeons, excepting those of receiving and some other ships, employed only in harbour duty, after twenty years service on full pay, receive as full pay 18s. per day. All surgeons, having served twenty years on full pay, have the privilege of retiring on a half pay of 6s. per day, unless their retirement is occasioned by ill health contracted in the service; in which case, they are intitled to 10s. All surgeons, after thirty years service on full pay, are allowed an unqualified right to retire on 15s. per day, but in these periods of time, not more than three years as hospital mate or assistant surgeon are allowed. The pay of assistant surgeon is per day, 6s. 6d., with the ship's provision; half pay, when reduced, 2s., provided they have served two years subsequent to January 23, 1805, and 3s. having so served for three years. Assistant surgeons are to be promoted according to seniority, and to furnish themselves with such instruments as the commissioners shall direct. Of those in actual service, not having obtained the qualification required, such as serve as first or second mates, or assistants, are allowed 5s. per day; third mates or assistants 4s. These classes are not, however, required to provide instruments, nor allowed half pay. Surgeons of hospitals receive per day, on first appointment 15s.; having served ten years in hospitals 20s. Half pay as to surgeons of ships. Lodging money, if not provided with a residence within the hospital, per week 15s. The time of service is to be added to, and calculated with, the time served on board ship. Surgeons of naval hospitals, dock yards, and marine

nine infirmaries, derive the same advantages, from the terms of twenty and thirty years service, as those who have served on board: but, as some of these surgeons may not have served on board, the advantage of this regulation extends only, to those already appointed, whose pay, half pay, and retirement, shall be regulated by the time they have served, as the rest. Dispensers in hospitals, receive per day, 5s. When a residence is not provided, lodging money per week, 12s. Hospital mates in all departments have, at home, per day 6s. 6d.; on foreign stations 7s. 6d. Half pay, per day 2s. if they have served two years on full pay, subsequent to January 23, 1805. If not accommodated within the hospital, lodging money, per week, 10s. 6d. Hospital mates removing from one department to another, are to prove themselves qualified by an examination.

REGULATIONS FOR THE BENEFIT OF THE SICK AND HURT. A convenient place is to be set apart, in every ship, for sick and hurt men. Proper persons are to be appointed to attend them, night and day, by turns. Conveniences, as cradles, &c., are to be made and fresh fish to be caught for them. They are not to be sent into hospitals attending the fleet, or ashore, unless it be inconvenient to have them on board their own ships. They are to be sent ashore by ticket, together with their cloaths and bedding, and the captains may order them slops if needful. Care is to be taken in the landing them, that they be duly attended, and furnished with proper carriages and necessaries. A commissioned officer is to go, twice a week, to the hospital to receive recovered men; and may receive those of other ships, when they are at a distance, and it is required by the agent. Captains are to correspond with the office for sick and hurt, about his sick men. Commanders in chief, and the commissioner of the navy, are to visit the hospitals at the ports, and to hear and redress complaints and grievances. Captains are to take care of their sick and wounded men, in foreign parts. In *hospital ships*, the gun deck is to be fitted up for the reception of the sick men, with proper conveniences. The hospital ship is to have supernumerary to her complement, a physician, an able and experienced surgeon, four mates, and six men assistants, a servant to the surgeon, a baker and four washermen. The captain is to subsist the men under cure, with the best and newest provisions in the ship, and fresh meat as often as may be. Captains are to send boats for their recovered men.

SERVANTS ALLOWED TO OFFICERS. The admiral and commander in chief of the fleet, is allowed fifty; admirals, thirty; vice admirals, twenty; and rear admirals, fifteen. Of which may be borne on the ships books, as servants; to the admiral and commander in chief of the fleet, sixteen; to admirals, twelve; to vice
and

and rear admirals, ten. Captains are allowed four servants in every hundred men of their complement. The lieutenant, master, second master, purser, surgeon, chaplain, and cook, in all ships down to sixty men inclusive, each one servant. The boatswain, gunner and carpenter, in all ships down to a hundred men, inclusive, each two servants; and from a hundred to sixty men, one servant. Servants to flag officers are to be reckoned over and above the complement of the ship; but the servants of captains and all other officers, are to be included in it. No servants to be allowed on the ship's books, under thirteen years of age, unless the son of an officer, and then not under eleven.

SUPERANNUATION. All the petty officers above mentioned are intitled, after various terms of service, to retire as superannuated, on certain pensions or allowances, in order to the acquisition of which, the parties must apply with proper certificates, first to the admiralty, and afterward at surgeons' hall, where they are duly examined.

WIDOWS. The widows of officers are intitled to pensions as follows. Those of Captains three years post, 80*l.* per annum; of post captains of less than three years standing, 70*l.*; of a commander, 50*l.*; of a superannuated lieutenant with the rank of commander, 45*l.*; of a lieutenant, a master and surgeon, 40*l.*; of a purser 30*l.*; of a boatswain, gunner, carpenter, second master of a yacht, or master of a naval vessel, warranted by the navy board, 25*l.* The children of the latter, with the widows and children of all those who die on half pay, to have such allowances as the lords of the admiralty shall think fit. The widows of each class are obliged, every year, to make oath that they are not married. The widows of officers who die on their half pay, and having employed no regular agent, are, upon application to the admiralty, furnished with printed forms, and every information relating to the pensions. In order to obtain the pay due at the time of decease, nothing more is required than to produce a certificate of death and administration.

SEAMEN. The duty of private sailors extends to every operation both of navigation and war, and in describing the command and regulation affecting officers, the state of seamen as affected by their exertions or orders, has been in great part disclosed. Yet there are many particulars, relating to this class of men, both while at sea and on shore, which ought to be considered and understood.

GOVERNMENT AND DISCIPLINE. The method of ordering seamen, and keeping up a regular discipline in the royal fleet, is directed by certain express rules, articles, and orders, first enacted by the authority of parliament soon after the restoration ;

tion; but since new modelled and altered, after the peace of Aix la Chapelle, to remedy some defects which were of fatal consequence in conducting the preceding war. In these articles of the navy almost every possible offence is set down, and the punishment annexed: in which respect the seamen have much the advantage over their brethren in the land service; whose articles of war are not enacted by parliament, but framed from time to time at the pleasure of the crown. None under the captain are allowed to inflict punishment. Articles of war are to be set up in some public place of the ship, and to be read to the ship's company once a month.

RIGHTS AND PRIVILEGES OF SEAMEN. No seaman can be taken out of his majesty's service by any process other than for some criminal matter, unless affidavit be first made, that the debt or damage amounts to 20*l.*; but in order to prevent the practice of obtaining the liberation of seamen by means of improperly suing out civil or criminal process, it is enacted, that petty officers or seamen arrested by sheriffs or by other officers, shall be kept in custody after being intitled to a discharge from any process, and conveyed to the commander in chief, or some commissioned officers, to serve on board his majesty's fleet. And the sheriff, gaoler, or other officer, shall be paid, by the treasurer of the navy, on producing a certificate, for conducting such seaman, at the rate of two shillings per mile. Seamen who have been employed in the king's service, and not deserted, may set up and exercise their trades, in any town or place of Great Britain or Ireland, without molestation, (except in Oxford or Cambridge,) and if any person is sued thereupon, and the plaintiff is cast, such persons shall have double costs. A seaman, instead of being committed to the house of correction, for default of paying the penalty for swearing, shall be put in the stocks for one hour for every single offence, and for any number of offences of which he shall be convicted at one and the same time; two hours. The treasurer, comptroller, surveyor, clerk of the acts, or any of the commissioners of the navy may punish seamen and others, making disturbances in the yards or offices, and may bind them to their good behaviour, and to appear at the next assizes, or general quarter sessions, to be prosecuted for such offence. Seamen are also intitled to send letters from their ships under the hand of the commanding officer on board, and to receive letters wherever they may happen to be on actual service, free of postage; and their receipts for wages, pay, and provisions are exempt from the stamp duty.

WAGES. With respect to their wages, several protective and beneficial statutes have been made. Whosoever willingly and knowingly shall personate or falsely assume the name or character

rafter of any officer, seaman, or other person, intituled, or supposed to be intituled, to any wages, pay, or other allowances of money, or prize money, for service done on board any of his majesty's ships, or vessels; or willingly and knowingly shall personate or falsely assume the name or character of the executor or administrator, wife, relation, or creditor, of any such officer, or seaman, or other person, in order to receive any wages, pay, or other allowances of money, or prize money as aforesaid; or shall forge or counterfeit, or procure to be forged or counterfeited, or utter or publish as true, knowing the same to be false, forged, or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority, in order to receive any such wages, pay or other allowances of money or prize money as aforesaid; or shall willingly and knowingly take a false oath, or procure any other person to take a false oath, to obtain the probate of any will or letter of administration, in order to receive the payment of any wages, pay, or other allowances of money or prize money due, or that were supposed to be due, to any such officer, seaman, or other person as aforesaid, who has really served, or was supposed to have served, on board any of his majesty's ships or vessels; every such person so offending shall be guilty of felony without benefit of clergy. And for the more effectual bringing the offenders to justice, the treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy, may act as justices, in causing any person charged with forging or counterfeiting, or procuring to be forged or counterfeited, any letter of attorney, bill, ticket, certificate, assignment, last will, or other power, or authority, or with uttering or publishing the same as true, in order to receive any wages, pay, or other allowance, due to any officer, seaman, or other person in his majesty's service, or with taking or procuring to be taken, for any of the purposes aforesaid; or to obtain a probate of any will, or letter of administration, in order to receive such wages, pay, or allowance, to be apprehended, committed and prosecuted for the same, and the constables, gaolers, and other officers, shall obey their warrants accordingly.

By a most excellent and benevolent series of acts framed by the right honourable Henry Dundas, afterward Lord Melville; after 1st May, 1795, every petty officer, and seaman, or landman, non-commissioned officer of marines, and marines serving or entering on board any vessel of his majesty, may allot a certain part of his monthly pay for the maintenance of his wife and children, or mother. And by 37 G. III. c. 53, an increase of wages is made to such persons, and they are allowed to allot a part of such pay, to be calculated as nearly as may be, to equal one

one half thereof. All petty officers, able seamen, ordinary seamen, landmen, and marines, who may hereafter be wounded in action with the enemy, shall receive their full wages and allowances, until their wounds are healed; or until (being declared incurable) they shall receive a pension from the chest, or be admitted into Greenwich Hospital. If any seaman or landman shall voluntarily enter himself with any regulating officer, and shall at the same time declare his name and place of abode, and that he is married, and the name of his wife, and her place of residence, and if he has children, how many, and how many are boys; and if he has a mother then living, the place of her residence; and that he is willing to allot a part of his wages for their support; then, in case his wife or mother reside in London, the same shall be paid by the treasurer of the navy; if at Portsmouth, Plymouth, or Chatham, or within five miles thereof respectively, by the clerk of the cheque, at those places; elsewhere, by the receiver-general of the land-tax of the county or city, or collector of the customs or excise nearest the residence of such wife or mother. And such regulating officer shall make out three declarations of allotment, and three orders of payment, to be triplicates of each other in a prescribed form; which being numbered and dated, and the blanks filled up, such seaman or landman shall sign the same, and such regulating officer shall also sign as a witness: and if such wife or mother shall then attend in person, such officer shall deliver to her one of the triplicate orders, and send the other two to the commissioners of the navy; but if the wife or mother shall not attend, the officer shall send all the said triplicates to the said commissioners, and shall specify and mention, opposite to the name of every man so entered, whether he has allotted any part of his pay as aforesaid, and to what amount, together with the date of such order. And as often as the commander of any such vessel shall read over the muster of his ship's company, if any such petty officer or person aforesaid shall declare, by word of mouth, or deliver in writing, the name and place of abode of his wife, and number of his children, if he have any, and how many are boys, or that he has a mother living, and the place of her residence, and shall desire that a part of his wages may be paid for their support, the same shall be paid in like manner as aforesaid. And the commissioners of the navy shall examine such declarations and orders, with the lists transmitted by such regulating officer, or commanding officer of any such vessel, and if found right, shall be filled up and signed by three commissioners, specifying the date; and they shall transmit one of the said declarations and orders to such wife or mother, and another to such receiver-general, collector of the customs or excise,

cise, or clerk of the cheque, to whom such order shall be directed, and the third shall be delivered to the treasurer of the navy. And at the end of twenty-eight days or more, after the date of such declaration and order, the same, together with such certificate as is mentioned therein from the minister and churchwarden of the parish where such wife or mother shall reside, shall be presented to the treasurer of the navy, or other public officer to whom the same is addressed, who shall examine into the truth thereof (upon the oath of such wife or mother, if necessary); and upon his being satisfied, he shall immediately pay to such wife or mother the sum so allotted, without fee or deduction, taking her receipt for the same, and shall sign his name as witness thereto, and shall mark such receipt with the same number as that of her husband's declaration and order, and shall also mark thereon the sum paid, and the date, and the time from whence, and up to what time the same so became due, and shall deliver back such declaration and order to such wife or mother; and shall also mark such triplicate in like manner; and at the end of every twenty-eight days afterwards, upon similar application, a like payment shall be made in the same manner. If the wife of any such person shall die and leave a child or children under fourteen, the minister and church-warden where such wife resided at the time of her death, shall certify to the commissioners of the navy the day of her death; and if children are left, the ages of those under fourteen, as nearly as they can, and how many are boys; and shall also certify their intention of appointing a fit person, resident within such parish, to receive that part of the father's wages allotted for the maintenance of his children, in case of his wife's death; and along with such certificate shall also transmit the triplicate of the declaration and order, which was in her possession at the time of her death; and if the commissioners of the navy are satisfied of the truth thereof, and that the father is still alive, and in the service of his majesty, they shall make out three certificates and orders, which shall be triplicates of each other, in a prescribed form, and shall send them to the minister or churchwarden of the parish where the wife died, who shall fill up the blanks, and sign them, and having procured two justices of the county, wherein such parish lies, to attest the same, shall return the said three triplicates to the commissioners of the navy. Certain forms of caution are then to be fulfilled, and at the end of twenty-eight days more, from the last payment made to the wife who died, or from the date of the original declaration and order, in case she has received no payment thereon, the person so appointed may apply to such public officer, to whom the same is addressed, for payment of what may be due thereon, and shall then produce the original declaration, and

order, and the certificate of the minister and churchwarden; and attestation by the justices, and allowance by three commissioners, as aforesaid; and shall also deliver a certificate from the minister and churchwarden, specifying that there is a child, or the number of children, under fourteen, then living in their parish, distinguishing how many are boys, and their ages as near as they can; and shall in all things proceed in the same manner as before directed; and such payment shall be continued so long as all, or any one of such children shall remain under fourteen, or the father shall live and continue in the king's service; except as afterwards excepted, where no demand shall have been made within six months. And if any such seaman, landman, or marine, shall be promoted, he may increase the allowance out of his pay to his wife, children, or mother, to the amount allowed to his rank as aforesaid; and the same rules and regulations shall be observed as before are directed and prescribed. Many clauses are introduced into this truly wise and benevolent law, for the prevention of fraud and delay; and it is enacted, that if any such wife as aforesaid shall desert, or otherwise neglect and leave unsupported and unmaintained any such child under fourteen, and who shall for one month become chargeable to any parish, the minister and churchwarden of such parish may certify the fact to the commissioners of the navy, and also their intention to appoint a proper person to receive, and apply to the use of such child, the pay so allowed for the support of her and such child; and if such commissioners be satisfied therewith, they shall proceed to appoint a proper person to receive such pay in the same manner as if such wife had died. All allotments of wages to be paid in pursuance of this act shall be fully paid, without deduction, although a part thereof be in fractions of the smallest denomination; and every person withholding any part thereof under any pretence whatever, shall forfeit 20*l*. And if any person shall make, forge, or counterfeit any such declaration or order, or any certificate or receipt herein before described or mentioned, or publish the same, in order to enable any person to obtain any such wages so allotted as aforesaid, he shall be guilty of felony without benefit of clergy.

MARINES. Beside the regular seamen employed on board his majesty's ships, there are bodies of marines, or soldiers, raised for the sea service, and trained to fight either in a naval engagement or in an action ashore. These useful corps were first raised in 1755, and their utility was frequently manifested in the seven years war, particularly at the siege of Belleisle, where they acquired a great character although they were then but little exercised in military discipline. At sea they are incorporated with the ship's crew, of which they make a part: and many of

them learn in a short time to be excellent seamen, to which their officers are ordered by the admiralty to encourage them, although no sea officer is to order them to go aloft against their inclination. In a sea fight their small arms are of very great advantage in scouring the decks of the enemy, and they are of great use in preventing attempts to board. The sole direction of the corps of marines is vested in the lords commissioners of the admiralty; and in the admiralty is a distinct apartment for this purpose. The secretary to the admiralty, is likewise secretary to the marines, and he has under him several clerks for the management of this department. The marine forces of Great Britain in the time of peace are stationed in three divisions; one of which is quartered at Chatham, one at Portsmouth, and another at Plymouth. By a late regulation, they are ordered to do duty at the several dock-yards of those ports, to prevent embezzlement of the king's stores, for which a captain's guard mounts every day. The marine corps are under the command of their own field officers, who discipline them, and regulate their different duties. In 1760, George II. formed a new establishment of marine officers, entitled, the general, lieutenant-general, and three colonels of marines (one of each division), to be taken from officers in the royal navy. The first two are always enjoyed by flag officers, the last by post captains only. This establishment was formed to reward distinguished officers.

GOVERNMENT. When at sea, the marines are under the general naval regulations, and there are annual acts for the better governing his majesty's royal marine forces whilst on shore, which are in most respects the same with the regulations concerning the land forces; only with some necessary variations, on account of those forces being subject to the jurisdiction of the admiralty. Thus, the lord high admiral, or three commissioners of the admiralty, are to form articles of war, and grant commissions for holding courts martial. The justice's certificate for enlisting is to set forth, that the second and third sections of the articles of war, for the better government of his majesty's royal marine forces, while on shore in Great Britain or Ireland, were read to the person enlisted, and that he had taken the oath of fidelity mentioned in the twelfth section of the said articles of war. Notice of a deserter being apprehended, is to be sent to the secretary of the admiralty. The billeting and carriages are to be in pursuance of orders from the admiralty.

ESTABLISHMENT. The present establishment of the marines, consists of 173 companies, besides four of artillery; and their head quarters are, at Chatham 48 companies, at Portsmouth and Plymouth 49 companies each, and at Woolwich 131 companies.

PAY. The establishment for the pay of his majesty's marine forces, has already been described at page 19 of this volume.

PRIVATEERS. A privateer is a kind of private man of war; the use of such ships is not very ancient, and some persons account those but one degree removed from pirates, who without any respect to the cause, or having any immediate injury done them, or not being so much as hired for the service, plunder men and goods, and ruin innocent traders, making a traffic of it amidst the calamities of war. That privateers in general are lawful when under right conduct, there is no room to question; all ways of bringing an enemy to reason, which are not repugnant to the laws of nations, are allowed; and it is of no consequence whether a person so commissioned is paid from the public fund, or content to pay himself, out of the spoils of the enemy; or if he acts for no pay at all, but out of love to his country, and loyalty to his prince. It has therefore been customary, since the trade of Europe has been so extensive, for princes and states, in times of war, to issue commissions to private men to equip ships and the persons concerned in privateers administer at their own costs a part of a war, by providing vessels of force, and all other military utensils, to damage the enemy; and they have, instead of pay, leave granted to keep what they can take, allowing the admiral his share. Besides the common commissions, mention is made of special commissions, granted to persons that take pay, who are under discipline; and if they do not obey orders, may be punished with death. And the wars in later ages have generally given occasion for the issuing commissions to annoy the enemies in their commerce, and hinder such supplies as might strengthen them, or lengthen out the war; and likewise to prevent the separation of ships of greater force from their fleet. By a law made in the sixth year of the reign of queen Anne, the lord high admiral, or commissioners of the admiralty, during the war, were empowered to grant commissions to commanders of British ships (on their giving security as usual, upon granting such commissions, except for payment of the tenths to the lord admiral) for the seizing and taking ships and goods belonging to enemies, in any sea or river; and persons serving on board privateers are not to be impressed by any ship of war, under 20*l.* penalty. Privateers may not attempt any thing against the law of nations; as to assault an enemy in a port or haven, under the protection of any prince or republic, be the friend, ally, or neuter; for the peace of such place must be kept inviolably. When these private commissions are granted, great care is always to be taken, to preserve the leagues of allies, neutrals, and friends, according to their several treaties.

The owners of privateers are not to convert any part of their captures to their own use, until they are condemned as prize: and whether a ship shall be prize or not, is tried in the admiralty, and no prohibition can be granted.

LETTERS OF MARQUE AND REPRISAL. Letters of marque are extraordinary commissions granted by authority for reparation to merchants, taken and despoiled by strangers at sea; and reprisal is the retaking of that which has been captured, or the taking of an equivalent: The goods of others may be taken upon the sea, by letters of marque and *jus reprisaliarum*; but not by any private authority, only by the power of that prince or state, whose subject the injured person is.

In modern times, the actual fact of caption by an enemy and a refusal of restitution is not required in order to the issuing of letters of marque and reprisal; they form part of the general system of warfare, and are of use only as vouchers for certifying to the ships of our own nation, or to the officers of friendly and neutral countries, the quality of the armed ship which is furnished with them. In ancient times, however, they were formally required and regularly issued. The earliest notice on English record of letters of marque, occurs in 1295, when they were granted by Edward I. to one of his Gascon subjects, to indemnify him for an injury sustained from the king of Portugal. Afterward they were granted to a private merchant for recovery of a debt; but by later treaties, provision has been made that they shall not be issued rashly, nor are they now allowed in any other case than that of a war between two countries. Before any letters of marque or reprisals are issued, it is enjoined, that security be given, in the high court of admiralty, before the judge, in the sum of three thousand pounds, if the ship carry above one hundred and fifty men, and, if a less number, fifteen hundred pounds, to make good any damages that shall be done, contrary to the intent and true meaning of their instructions, and (in case the whole of the prizes is not given to the captors) to cause to be paid to his majesty, or to such person as shall be authorised to receive the same, the full tenth part of the prizes, goods, and merchandizes, according to the price at which the same shall be appraised, as also the customs due to the crown.

PRIZES. The right of taking prizes is among the most ancient and established customs of war. It was formerly carried to a much greater extent than modern policy allows. The system at present observed in England and the British dependencies, with respect to captures at sea, is perfectly correspondent with the purest principles of the law of nations. No prize can be appropriated until legally condemned; the proprietors are al-
lowed

lowest all possible means of defence in the admiralty court, and if dissatisfied with the decision, they are at liberty to appeal to a tribunal instituted on purpose; and the decisions are not formed on the narrow principles which avowed hostility might be expected to create, but on such as are founded on general law, locally administered, but in its mode of administration convertible into a precedent, and subject to the animadversion of those nations with which Great Britain is at peace.

DISTRIBUTION OF PRIZES. The distribution of the value of prizes taken by privateers has already been mentioned. The property in all other captures, is by prerogative vested in the crown; but as an incitement to, and reward of *valeur*, it is usual for the king by proclamation to apportion the value of all prizes among the captors and in the distribution is included the value of the ship, if retained for the public service, and a supposed ransom of the crew, called head money. The proportions in which this benefit is distributed, vary according to the discretion of the ministry, but that which has been most in use is as follows. To the flag-officer, when there is any such concerned in the capture, $\frac{1}{8}$ part of the whole, and to the captain $\frac{2}{8}$; but if there be not any flag-officer, who has a right to a share, then the captain is to have $\frac{3}{8}$. To the marine captain if any, lieutenants of the ship, and master $\frac{1}{8}$. To the marine lieutenants, if any, boatswain, gunner, carpenter, masters mates, surgeon, and chaplain $\frac{1}{8}$. To the midshipmen, carpenter's mates, boatswain's mates, gunner's mates, corporal, yeoman of the sheets, coxswain, quarter master, mates, assistant surgeons, yeomen of the powder room, and the serjeant of the marines $\frac{1}{8}$. To the trumpeters, quarter gunners, carpenter's crew, steward, cook, armourer, steward's mate; cook's mate, gunsmith, coopers, swabbers, ordinary trumpeters, able seamen, ordinary seamen, volunteers by warrant, and marine soldiers, if any, $\frac{2}{8}$. And where there are no marine officers or soldiers on board, the officers and soldiers of land companies, if any, have the like allowance as is appointed for them; but in case any officers are absent, in time of capture, their shares are to be cast into the last article.

EMBARGOES. It has been usual in all nations at the time of going to war, to seize and detain all ships in their ports belonging to the enemy, even although they were trading there under the faith of treaties, and incapable of doing injury or violence.

Perhaps this practice is better vindicated by allegations of its antiquity and generality, than by arguments of its justice. As it is always mutual it is so far not unfair; and were the right abandoned by all nations, it would be difficult to define what voyage a ship should perform, or under what guaranty she should

fail, so as to effect her own security without doing injury to the nation whose ports she quitted, or conveying assistance or intelligence to the enemy. The vessels thus secured have ever been condemned as lawful prize; but as no admiral or other person is intitled to the benefit, the produce remains purely the property of the crown. It is generally applied by his majesty's direction, and with the consent of parliament, in prosecuting some of the objects of the war, or in relief of the public burthens.

NAVY AGENTS. All matters relating to the interests of individuals in the navy, both in pay and prize-money, are transacted by navy agents. These persons are not appointed by government, or limited in number; they recommend themselves by diligence and integrity, and are paid by a moderate poundage out of the sums they receive.

The general business of the navy connected with government is transacted at the following offices:

NAVY PAY OFFICE, OR TREASURER OF THE NAVY'S OFFICE. The treasurer of the navy was formerly included in all commissions, as a member of the navy board; but having generally had other duties, as a privy counsellor and confidential officer of government, the duty of presiding at the board has been left to the comptroller; and, by the new commissions, he is no longer a member of the board, but allowed to be present at their deliberations, if he thinks proper.

His emoluments arose from a poundage out of the payments made by him, which, with the advantages derived from monies left in his hands, became in time enormous, and the whole system was altered by increasing the treasurer of the navy's salary, and debarring him from the use of the public money, which by the regulations of the act of 25th Geo. III. c. 31. commencing 1st of July, 1785, is not to be applied for out of the exchequer, till the current payments require, and must then be placed in the Bank of England, and drawn from thence as wanted, for each head of service to which it is appropriated. He has at present a salary of 4000*l.* a year net, in lieu of all other emoluments whatever, stationary for his own use, and a house, excepted. Former treasurers had unlimited allowances of coals and candles, which are now received.

The chief establishment of the treasurer of the navy's office consists of a treasurer, a paymaster, five chief officers at the head of as many different branches, an assistant in the inspector's branch, with clerks and other inferior officers.

The treasurer does not execute the duties of his office in person, but delegates powers for that purpose to the *pay-master*, who accordingly conducts the business. The treasurer, how-
ever,

ever, is responsible for his conduct, and for all the money issued from the exchequer, or that shall come into his hands by any other means; his salary is 800*l.* a year.

The business of the five branches of which the office at present consists is briefly as follows.

The *Pay-Branch*, to pay seamen's wages and the yards. The chief person employed in this branch, has a salary of 660*l.*, and is called deputy-paymaster. The residue of the business is committed to the officers next mentioned, and with their places their salaries are specified. Superintendant of the payments at Deptford and Woolwich Dock yards, 495*l.*; at Portsmouth two, one having 440*l.*, the other 330*l.*; at Plymouth two who are similarly paid; at Sheerness one, 330*l.*; at Chatham one 440*l.* In the office in London, the first clerk, who superintends the making up of accounts, has 495*l.*; and there are several other clerks, with salaries from 275*l.* to 101*l.*

The *Navy Branch*, to pay bills assigned by the navy, and sick and hurt boards. The chief person in this department is the cashier of the navy for paying navy bills, whose salary is 660*l.*; and under him are various clerks, with salaries from 330*l.* to 101*l.*

The *Victualling Branch*, to pay bills assigned by the victualling board. In this division the cashier has 660*l.*, and the other clerks salaries as in the navy branch.

The *Accomptant's Branch*, to bring up the accounts of the ex-treasurers, and to carry on and make up the account of the treasurer in office. The salary of the accomptant is 660*l.* and the clerks as above.

The *Inspector's Branch*, to inspect and examine all wills and powers of attorney, and to see that they are duly executed, according to act of parliament, and to grant certificates as an authority for the payment of wages due to the parties.

There is also a branch for *paying seamen's tickets*, the chief cashier in which receives the same salary as those at the head of the preceding departments, and the inferior clerks are paid in the same proportion. Two clerks for *prize matters* receive respectively 200*l.* and 100*l.* a year, and there are several *extra clerks* with salaries of 78*l.* 5*s.*

The chief of the officers, called *conductors*, receives and packs the money to the out ports; and the other three conductors attend at each port to count out at the pay-table on shore, or to convey on board ship the money for payments at each port. And the officer called keeper of ships' books, attends in like manner the payments in London; the first of these persons has 330*l.* a year; the next three, stationed at Portsmouth, Plymouth, and Chatham, 150*l.* each; and the last 140*l.*

OFFICE. The navy pay office is in Somerset Place. i

NAVY OFFICE. The first establishment of a royal navy office was in the reign of Henry VIII. who appointed persons, under the title of principal officers of his navy, to manage the civil branches thereof, under the lord high admiral; but those officers had no positive instructions for their guidance in the execution of their duty, until the reign of Edward VI. when certain ordinances were issued for the conduct of the officers intrusted with the management of marine affairs; which ordinances form the basis of all the subsequent instructions given for the conduct of the officers to whom the management of the civil branch of the navy has been committed. The officers at that time appointed to this duty were, the vice-admiral of the fleet, the master of the ordnance, the surveyor of marine causes, the treasurer, the comptroller, the general surveyor of the victualling, the clerk of the ships, and the clerk of the stores; who were directed to meet once a week at the office on Tower Hill, to consult together for the good order of the navy, and to report their proceedings once a month to the high-admiral: particular duties are also allotted to each member. The affairs of the navy appear to have continued under the management of such officers, until the time of James I. who, in the sixteenth year of his reign, issued a commission, under the great seal, to Sir Thomas Smith and others, to inquire into frauds and abuses, with power to remedy the same, and to manage, settle, and put the affairs of the navy into a right course. This commission was determined on the demise of James I. in 1625, and several new ones were issued with various effect until the restoration, when Charles II. constituted a navy board by commission under the great seal, consisting of the treasurer, comptroller, surveyor, and clerk of the navy, who were styled principal officers. To them on the 4th July, 1660, three commissioners were added, to assist in the management of the affairs of the navy. In January, 1661, the Duke of York, then lord high admiral, established certain instructions now in use for the conduct of the four principal officers; the other three, being commissioners at large, had no particular line of duty allotted them, until the year 1666, when one of them was directed to take upon him so much of the comptroller's duty as related to the examination and controul of the treasurer's accounts; another that part which related to the victualling accounts; and in the year 1671, the third commissioner had that part of the comptrollers' duty which related to the examination and controul of the store-keeper's accounts, assigned to him; which, with the addition of one commissioner at large, is the present arrangement of the navy board. Thus it appears that the constitution of this board, and the relative duties

duties of its members, have undergone very little alteration (except the occasional variation of the number of commissioners) for upwards of a century, notwithstanding the great increase of the navy; and that the duty then prescribed to the principal officers and commissioners remains nearly the same at this day.

ESTABLISHMENT. The establishment of the navy office consists of eleven commissioners (exclusive of the treasurer); an assistant to the clerk of the acts; five assistants to the surveyor; a store keeper of stores; with a great number of clerks and other inferior officers. The treasurer is not included in the patents granted to the navy board, but provision is made therein for his acting as, a member of the board, when he thinks fit to attend. Of the eleven commissioners, seven are resident in London; the other four are specially appointed to reside individually at the dock yards at Chatham, Portsmouth, Plymouth, and Halifax in North America.

DUTY. The duty of the navy board is, under the directions of the Lords of the Admiralty, to consult together how to transact, to the best advantage, all affairs tending to the well being and regulation of the civil establishment of the navy, and all its subordinate instruments, wherein they are to proceed by common council, and agreement of most voices; to make contracts for and attend to the proper distribution of naval stores of every kind, to prepare all estimates of expences; to direct all monies for naval services into the treasurer's hands, and to examine and certify his accounts of expenditure.

The seven commissioners resident in London, who properly compose the navy board, are, the comptroller, the surveyor, the clerk of the acts, the comptroller of the treasurer's accounts, the comptroller of the victualling accounts, the comptroller of the store keepers' accounts, and one extra commissioner.

Besides the general duty of these officers, as members of the navy board, they have each, as their titles import (except the extra commissioner), special duties, of which an abridged account is here given.

The *Comptroller* is to preside at, and prepare matter for the discussion of the navy board; to conduct the general business that comes before it; to superintend the offices particularly committed to his charge, viz. the office for bills and accounts, domestic and foreign, and that of the payment of seamen's wages; to controul the payment of half pay at the navy pay office, the payment of artificers and labourers at Deptford and Woolwich yards, and of the ships paid off at those places; besides visits to the yards, attendance at the admiralty and other offices in town, and general superintendence of all the branches of the navy

navy office. The comptroller's duty originally extended to the treasurer's accounts, both naval and victualling, the store keepers' accounts, the ticket office, and the payment of all wages, till separate comptrollers for these branches were appointed in 1666 and 1671. The comptroller of the navy has under his charge two offices, one for bills and accounts, and the other for seamen's wages. In the former all accounts are examined, and bills made out relative to the following heads, viz. the yards, manning of the navy, contracts for stores and services, transports, disbursements of admirals, and other naval commanders at home and abroad, contingencies of admiralty, and various other articles of the like nature; also for the pay of the whole civil establishment of the navy. In the seamen's wages office, a check is kept on the wages due to all officers and men belonging to ships and vessels in sea pay; quarterly estimates are made out; clerks are deputed to attend the payments; and to assist in making up ship and yard books, half pay lists, &c. The accounts of men borne in each ship, and of the officers and servants allowed to each, and of sick men on shore, are examined and adjusted: sundry lists, such as of officers' annual pay, half pay, arrears, claims, defalcations, &c. are kept here; entries are made out of the clerk of the cheque's musters; a hurt book is kept of the pensioners at Chatham, and their particular injury, also books of the payment of such pensioners; and a check is kept on the navy pay office of all abatements made upon ship and yard books for the use of the said chest.

The *Surveyor* is to survey or examine reports of surveys taken of ships, to attend to their repairs, or the building of new ships, and providing them with stores; to examine all demands for stores at home, or accounts of stores purchased abroad; with other articles of business of a similar nature. His two assistants superintend the repair and building of ships by contract in the merchants' yards, and draw up reports, returns, and estimates, on all business in the surveyor's department carried on there, or in the several dock yards.

The *Clerk of the Acts* is to conduct the correspondence of the board; forward all orders to dock yards; take care of the papers, journals, and log books, prepare contracts and securities, accept bills drawn on the board; make out imprest bills, widows' and orphans' bounty bills, warrant officers' appointments, navy officers' certificates; with other duties of a similar nature. He is, in short, register and accountant to the navy office; and his assistant acts as secretary to the navy board, and has of late been known by that appellation.

The *Comptroller of Treasurer's Accounts* is to check the treasurer's accounts for naval and sick and hurt services; to examine
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the accounts sent by the treasurer half monthly, and prepare a monthly account current, shewing the balance in his hands on each head of service; to prepare the annual estimates for the ordinary of the navy, and account of navy debt: to check sub-accountants; to make out daily lists of bills assigned on the treasurer, and to prepare assignments. It is also a part of his duty to superintend the ticket office, where the accounts of the number of seamen and mariners are made up, and the various payments made by lists and signed tickets are adjusted; where likewise bond tickets are prepared to supply the loss of originals, and certificates of various kinds when requisite, are granted to officers and men. He has likewise the joint superintendence of the sloop office, where the slops received from the contractors are inspected, and certificates for them granted, if approved; and where store-keepers' and pursers' accounts are examined, and all other matters relative to this branch of business are transacted.

The *Comptroller of Victualling Accounts* has the same duty with respect to the treasurer's victualling accounts, as the preceding commissioner has with respect to the naval and sick and hurt accounts. Besides which he attends in his turn the payment of ships and recals in London, and of the yards at Deptford and Woolwich.

The *Comptroller of Store-keeper's Accounts* is to see that the accounts of stores in the different yards are properly kept; to check the receipt and issue of them, and be able to give information, when called upon, of the quantity in hand of all the different kinds of stores, which consist of the various articles and materials necessary for the construction and equipment of ships. Besides which, he takes his turn of attending payments in London, and in the neighbouring yards.

The *Extra Commissioner* has no particular branch of business allotted to him, but his usual employment has been to examine journals, certificates, log books, cases of run men, muster, returns, reports, and accounts of cordage; also to attend examinations of midshipmen for lieutenancies; and, in his turn, the payments in London and in the neighbouring yards.

The attendance of comptroller of the navy is constant and unremitting, as is also that of the assistant to the clerk of the acts, who officiates as secretary to the board. The other commissioners of the navy attend, in general, daily, as do likewise the assistants to the surveyor of the navy, as well as the store-keeper of the sloop office.

From the great increase of business since the original institution of the navy board, several parts of the personal services allotted to the commissioners are unavoidably left to be conducted

ducted by the chief and other clerks in each department; the voluminous and extended correspondence, together with the direction of the whole, and the execution of a part of the business occupying the whole time of the principals.

EMOLUMENTS. The salaries and emoluments of the commissioners are calculated at 1200*l.* a year each. In their various branches clerks are liberally but not extravagantly remunerated.

SHIPS AFLOAT. There are also commissioners at Portsmouth, Sheerness, and Plymouth, who have each a guinea per day, for superintending the payment of ships afloat at the out ports.

SICK AND WOUNDED SAILORS. The methods adopted on board ships of war and hospital ships for the relief of those whom the hand of providence or the chance of war has disabled from continuing their exertions to serve the country, have already been noticed, and it will be found that on shore, the same benevolent exertions are made in their favour, that when superannuated and helpless, they are not destitute of a comfortable and honourable asylum, and that their widows and orphans have also a support, from public institution or private benevolence.

SICK AND HURT OFFICE. A commission, from which this office appears to have originated, existed in the reign of William III., but in 1692, it was dissolved, and from that time, until of late years, the office was in a state of fluctuation, overburthened with duties or uncertain of their extent, the number of commissioners unsettled, and the accounts incapable of being reduced to regular and satisfactory order. The duty is now perfectly well adjusted and understood, and transacted with the greatest uniformity and success.

The business of this office is to provide hospitals, sick quarters, medical assistance, medicines, and necessaries for sick and wounded seamen belonging to his majesty's service; to pay all expences attending such services; and examine and pass the accounts of all persons employed in the execution thereof. The present establishment consists of four commissioners, a secretary with chief clerks, junior clerks, and other inferior officers; besides which there are medical assistants, and agents, employed at different ports and places, at home and abroad.

COMMISSIONERS. The commissioners are four in number; of whom three are physicians; their duty is, to superintend the whole business, under the direction of the lords of the admiralty; to appoint proper persons for executing it; to contract for, or otherwise provide, hospitals, sick quarters, provisions, medicines, bedding, slops, and other necessaries; to visit the
several

several hospitals, occasionally, to see that no abuses are committed, and that the standing regulations for their good government are properly attended to, and to hear and redress complaints; to examine, and, if approved, to allow, all accounts relative to this service, and to assign bills upon the treasurer of the navy for payment of charges and expences. Their attendance is two days in a week, or oftener if the business requires it. Their salaries are 500*l.* each, the senior commissioner having an additional allowance of 65*l.* for house rent.

OTHER OFFICERS. The business of the office is divided into branches, each chief having under him a proper number of subordinate persons, and the name of the office generally denoting its duty. The secretary has a salary of 500*l.*; there are home and foreign departments for seamen, the chief clerk in each of which has 400*l.*; a superintendant of the London hospitals, with a salary of 150*l.* There is also a department for sick prisoners of war, and formerly all their concerns fell under the inspection of the commissioners.

HOSPITALS. For the reception of the sick and hurt, hospitals are provided at the most convenient ports in Great Britain and its dependencies. The principal establishments in England are at *Hullar* near Gosport, at *Stonehouse* near Plymouth, and at *Deal*. They are under the direction of governors, lieutenants, and other officers, who have liberal, though not extravagant appointments; physicians and surgeons are regularly appointed and sufficiently paid; and there is a due portion of subordinate officers, and a chaplain. Two physicians are also appointed *general inspectors of naval and prison hospitals*, with salaries of 500*l.* each.

On foreign stations, hospitals are established at Madras, Jamaica, Antigua, Halifax and Gibraltar.

These are the means of relief supplied by public bounty out of the national purse, for those who have such just and irresistible claims to protection and gratitude: it remains to notice other establishments for the solace of age, the relief of widowhood, and the protection and care of orphans, which have originated in, or are supported by, royal or private munificence.

GREENWICH HOSPITAL. The greatest and most conspicuous of these establishments is Greenwich hospital. Of a royal residence at this spot, traces occur as early as the year 1300, and thence constantly to 1433, when it was the property of Humphry, commonly called the *good Duke of Gloucester*, who received a royal licence to embattle his manor house, and to make a park of 200 acres. Soon after this, the duke rebuilt the palace, calling it *Placentia*, or the manor de Pleasaunce; he in-

closed

closed the park also, and erected within it a tower on the spot where the observatory now stands. On the Duke of Gloucester's death, in 1447, this manor reverted to the crown, and continued upward of two centuries a celebrated royal residence, the birth place of many princes, and among others the illustrious and ever memorable queen Elizabeth, who also made it her summer residence. During the protectorate it shared the fate of other royal and public property, parts being sold to defray the expences of the republican government, but these portions were recovered at the restoration; and Charles II. having pulled down the decayed edifice begun by Humphry Duke of Gloucester, commenced a new erection on the spot, on a most magnificent scale, but completed only one wing. In this state the palace remained until after the revolution, when, at the suggestion of Queen Mary, a project was formed for providing an asylum for seamen, disabled by age, or maimed in the service of their country. Among various places recommended for its site, Sir Christopher Wren proposed that the palace at Greenwich should be converted to this use, and enlarged with new buildings; and in pursuance of his advice, the king and queen, by letters patent in 1694, granted that, with other buildings and certain parcels of ground adjoining, to trustees, "to be converted and
 " employed to and for the use and service of a hospital, to be
 " there founded for the relief and support of seamen of the
 " Royal Navy, who, by reason of wounds or other disabilities
 " should be incapable of farther service at sea, and unable to
 " maintain themselves; and for the sustentation of widows,
 " and the education of children of such seamen as should be
 " slain or disabled in the King's service." The following year, the king (Queen Mary being dead) appointed commissioners for the purpose of considering, with the assistance of the surveyor general and other artists, what part of king Charles's palace, and the other buildings granted, would be fit for the intended hospital, and how they might be best prepared for that use; of procuring models for such new buildings as might be required; of preparing, with the assistance of the attorney and solicitor general, a charter of foundation, with statutes and orders for the management of the hospital; and for other purposes. The king also granted 2000*l.* yearly, towards carrying this noble work into effect. The commissioners having ascertained that king Charles's unfinished palace might, by the addition of a building on the west side, be made capable of receiving, conveniently, between three and four hundred seamen, the preamble of a subscription-roll was drawn up, but the sum received did not amount to 8000*l.* Sir Christopher Wren, who was appointed the architect, generously contributed his time,
 labour,

labour, and skill, and superintended the progress of the work for several years without any emolument or reward. The foundation of the first new building was laid on the third of June, 1696, from which time the hospital has been gradually enlarged and improved, till it has attained to its present splendour and magnificence.

DESCRIPTION. Greenwich Hospital, in its present state, consists of four piles of building, distinguished by the names of King Charles's, Queen Anne's, King William's, and Queen Mary's. King Charles's and Queen Anne's are those next the river: between them is the grand square, 270 feet wide; and in front by the river's side a terrace 865 feet in length. The view, from the north gate, which opens to the terrace in the midway between the two buildings, presents an assemblage of objects uncommonly grand and striking. Beyond the square are seen the hall and chapel, with their beautiful domes, and the two colonnades, which form a kind of avenue, terminated by the ranger's lodge in the park; on an eminence of which appears the royal observatory amidst a grove of trees. King Charles's building stands on the west side of the great square; the eastern part of it, which is of Portland stone, was erected in 1664, by Webb, after a design of his late father-in-law, Inigo Jones. The front toward the east has in the centre a portico, supported by four Corinthian columns; and at each end a pavilion formed by four columns of the same order. In this range of buildings is the council room, with an antichamber. The north front of King Charles's building, which is towards the river, contains the apartments of the governor and lieutenant governor. This and the south front have each two pavilions similar to those in the east front. The west side of this building, comprehending the north west and south west pavilions, was originally all of brick. It was the first addition to King Charles's palace, being called the *basil building*. The foundation was laid in 1696, and it was nearly completed in 1698. The whole of what is now called King Charles's building, contains fourteen wards, in which are 301 beds.

Queen Anne's building, on the east side of the great square, nearly corresponds with King Charles's, on the opposite side. The foundation of this building was laid in 1698: the greater part of it was raised and covered in before 1728. In this building are several of the officers' apartments; and twenty-four wards, in which are 437 beds.

King William's building stands to the south west of the great square. It contains the great hall, vestibule, and dome, designed and erected by Sir Christopher Wren, between 1698 and 1703: to the east of these adjoins a colonnade 347 feet in length, sup-

ported by columns and pilasters of the Doric order, twenty feet in height. In the vestibule of the hall is a model of an antique ship, found in the Villa Mattea (given by Lord Anson). The great hall is 106 feet in length, 56 in width, and 50 in height. In the frieze is the following inscription. "*Pietas augusta ut habitent securè et publicè alantur qui publicæ securitati invigilarunt regia Grenovici Maria auspiciis sublevandis nautis destituta regnantibus Gulielmo et Maria*, 1694. The painting of this hall was undertaken by Sir James Thornhill in 1708, and finished in 1727. It cost 668*l.* being after the rate of 3*l.* per yard for the ceiling, and 1*l.* for the sides. This price the directors agreed to pay, after consulting some of the most eminent artists, who declared the performance to be equal in merit to any thing of the kind in England, and superior in the number of figures and ornaments. On the ceiling are portraits of the royal founders William and Mary, surrounded by the Cardinal Virtues, the four Seasons, the English Rivers, the four Elements, the arts and sciences relating to navigation; and other emblematical figures, among which are introduced, portraits of Flamstead, the astronomer royal, and his pupil Mr. Thomas Weston. The sides are adorned with fluted pilasters, trophies, &c. The ceiling of the upper hall represents Queen Anne and Prince George of Denmark, accompanied by various emblematical figures; the four quarters of the globe, &c. The subjects on the sides are, the landing of the prince of Orange at Harwich; and of George I. at Greenwich. At the upper end of the hall are portraits of George I. and his family, with many emblematical figures; among which Sir James Thornhill has introduced his own portrait. The west front of King William's building, which is of brick, was finished by Sir John Vanburgh about the year 1726. This building contains eleven wards, in which are 551 beds. The foundation of the eastern colonnade (which is similar to that on the west side) was laid in 1699; but the chapel, and other parts of Queen Mary's building which adjoin to it, were not finished till 1752. This building, which corresponds to that called King William's, contains thirteen wards, in which are 1092 beds.

On the 2d of January, 1779, a dreadful fire happened in the building, which destroyed the chapel with its dome, part of the colonnade, and as many of the adjoining wards as contained 500 beds. The whole has been since rebuilt. The former chapel, which was destroyed, was designed by Ripley; the present, by the late James Stuart, well known by his interesting publications on the antiquities of Athens. It is 111 feet in length, and 52 in width: the portal is extremely rich; and the interior fitted up in the most elegant style of Grecian architecture. On the
sides

sides are galleries for the officers and their families, and beneath, seats for the pensioners, nurses, and boys.

The two pavilions at the extremities of the terrace were erected in 1778, and dedicated to their Majesties. The east and west entrances into the hospital are formed by two piers of rustic work. On those at the west entrance are placed two large stone globes, each six feet in diameter.

THE INFIRMARY. In 1763, it having been determined to erect an infirmary without the walls of the hospital for sick pensioners, Mr. Stuart gave a design for the building, which was immediately completed by Mr. Robinson, then clerk of the works. It is a quadrangular brick building, 198 feet in length, and 175 in breadth, containing 64 rooms, each formed so as to accommodate four patients; every room having a chimney place and ventilator. This building contains also a chapel, hall, and kitchen; apartments for the physician, surgeon, apothecary, matron, &c. Within the walls are hot and cold baths.

SCHOOL HOUSE AND DORMITORY. In 1783, a school house, with a dormitory for the boys, was built without the walls of the hospital; the wards which the boys formerly occupied being appropriated to the reception of an additional number of pensioners. This building is 146 feet in length and 42 in breadth, exclusive of a Tuscan colonnade in front, which is 180 feet long, and twenty broad. The school room, 100 feet by 25, is capable of containing 200 boys. In the upper stories are two dormitories of the same length, furnished with hammocks. There are apartments also for the guardian, nurses, and other attendants; and, at a small distance, a house for the school master. Among other out-buildings belonging to the hospital are, a large brewery, and stables for the use of the officers.

QUALIFICATIONS OF THE PENSIONERS. The pensioners who are the objects of this noble charity, must be seamen disabled by age, or maimed either in the king's service, or in the merchants' service, if the wounds were received in defending or taking any ship, or in fight against a pirate. Foreigners who have served two years in the British navy, become entitled to receive the benefits of this charity in the same manner as natives. The widows of seamen, pursuant to the intention of the royal founder, are provided for in this establishment, enjoying the exclusive privilege of being appointed nurses in the hospital. In the month of January, 1705, the hospital was first opened for the reception of pensioners, when forty-two seamen, qualified as above mentioned, were admitted. Their number has since been gradually increased to nearly 3000. They are provided with clothes, diet, and lodging; and have a small allowance for pocket money; that of the common sailors being a shilling a

week; the boatswains two shillings and sixpence; and the boatswain's mates one shilling and sixpence. The nurses, who must be widows of seamen, and under forty-five years at the time of their admission, are allowed 8*l.* per annum as wages, and provided with clothing, diet, and lodging.

OUT-PENSIONERS. In 1763, in consequence of an application from the commissioners of Greenwich hospital, assembled at a general court, an act of parliament passed, enabling them, after defraying the necessary expences of the hospital, to grant pensions to such poor seamen, worn out and become decrepid in the king's service, as could not be received, for want of room, in the hospital: In pursuance of this act 1400 out-pensioners were appointed to receive 7*l.* per annum: their numbers having gradually decreased, by death, or admission, 500 more were appointed in 1782. For the protection of these persons in the enjoyment of the provision made for them, it is enacted, in the same statute, that whoever shall personate or falsely assume the name and character of an out-pensioner of Greenwich hospital, in order to receive the money due to him, or procure any other to do so, shall be guilty of felony without benefit of clergy. And in order to receive the pension half yearly as it becomes due, each pensioner must, together with the printed bill delivered to him by the commissioners, produce a certificate under the hand of the minister and church-wardens where he resides, that the person is, to the best of their knowledge and belief, the person named in such bill.

EDUCATION OF SEAMEN'S SONS. From the beginning of the institution, in compliance with the royal founder's intention, a certain number of seamen's sons have been educated in the hospital; at first, ten only; in 1731, they were increased to sixty; and afterward to 150. The boys must be, at the time of their admission, between eleven and thirteen years of age; objects of charity; of sound mind, and able to read. They are lodged, clothed and maintained three years; during which time they are instructed in the principles of religion by the chaplains; and in writing, arithmetic, navigation, (and drawing if they shew any genius for it,) by the school-master. Each boy has a bible and prayer book given him on his entrance, and is supplied, during his stay, with all necessary books and instruments; which he is allowed to take with him on leaving the school, to be bound out for seven years to the sea service. About 3000 boys have thus received the blessing of an useful education. The master, who is appointed by the directors, has a salary of 150*l.*, and a house.

REVENUE OF THE HOSPITAL. The funds which have sufficed to raise the magnificent buildings of this hospital, and
to

to increase, from time to time, the establishment to its present extent, have been derived from the following sources: the sum of 2000*l.* per annum granted by the king, in 1695. About 8000*l.* subscribed as before mentioned. A duty of sixpence per month, paid by every mariner, either in the king's or merchant's service; granted by parliament in 1696, and in 1712*. The sum of 19,500*l.*, being fines paid by certain merchants for smuggling, given by the king, in 1699. The sum of 600*l.*, being the produce of a lottery, (anno 1699,) from which much greater gain was expected. The profits of the market at Greenwich, given by Henry Earl of Romney, in 1700. The sum of 6472*l.* 1*s.* being the effects of Kid, a pirate, given by Queen Anne, in 1705. The moiety of a large estate bequeathed by Robert Osbaldeston Esq. in 1707, (valued at 20,000*l.*) and the profits of his unexpired grant of the North and South Foreland light-houses (since renewed for ninety-nine years to the hospital). Forfeited and unclaimed shares of prize money, granted by Queen Anne, in 1708. Six thousand pounds per annum, granted by Queen Anne, in 1710, out of the duty on coals, and continued for a longer term by George I. The wages and allowance of the chaplains of Deptford and Woolwich dock yards, granted to the hospital in 1714; an increase of salary having been given in lieu to the chaplains. The half pay of all the officers belonging to the hospital, from the year 1728, when salaries were assigned them in lieu. Ten thousand pounds granted annually by parliament in 1728, and for several years following. An estate given by Mr. William Clapham, of Eltham, (1730,) consisting of wharfs and warehouses, near London bridge (after the death of his sister without issue.) The estates forfeited by the Earl of Derwentwater, given by act of parliament in 1735, with certain monies received on account of the said estates, and then remaining in the exchequer; but in 1788, on a petition from the Earl of Newburgh, an act of parliament passed, granting to him and his heirs male, a rent charge of 2500*l.* per annum, to be paid by the treasurer of the hospital. Benefactions of private persons at various times, (subsequent to the subscription already mentioned,) amounting in the whole to about 9,400*l.* The present revenue of the hospital arises from such of the grants and benefactions above mentioned as were of a permanent nature, and from fines for fishing

* At first the benefit of the institution was confined entirely to seamen in the king's service; but, in 1712, all seamen having been made liable to the duty of sixpence per month, imposed before only on seamen in the king's service, the benefit of this charity, in aid of which the duty was granted, were extended as above mentioned.

with unlawful nets, and other offences committed on the river Thames.

FUNDS OF THE SCHOOL. The expences of the school are not paid out of this revenue, but it is supported solely by the following incidental funds, viz. money received for shewing the hall, chapel, and other parts of the building; mulcts, absences, checques, &c. of the pensioners and the nurses; profits on the provisions purchased of the pensioners; sale of old household stores; and unclaimed property of deceased pensioners and nurses. These funds have proved adequate to the expences of the establishment: and have produced a balance of savings invested in the stocks.

CONSTITUTION AND GOVERNMENT OF THE HOSPITAL. Two commissions relating to Greenwich hospital were issued by William, and in 1703 a third by Queen Anne, which directed that seven commissioners should form a general court, whereof the lord high admiral, the lord treasurer, or any two privy counsellors should be a *quorum*; general courts were to be held quarterly; the governor and treasurer of the hospital to be appointed by the crown, all the other officers by the lord high admiral, having been recommended to him by the general court: the same commission appoints twenty-five directors to be a standing committee, to meet every fortnight; it vests the internal regulation of the hospital in the governor, and such a council of the officers as the lord high admiral shall appoint. Such has been the constitution of the hospital to the present day, warrants having been issued from time to time by the admiralty for forming new councils, as the increase of officers or other circumstances rendered it necessary. New commissions of the same nature as that of Queen Anne were granted by George I. and George II; but it was not till the year 1775, that the commissioners became a body corporate by a charter of George III., who granted powers to finish the building; to provide for seamen, either within or out of the hospital; to make bye laws, and for other purposes. It is provided by the charter, that all the officers of the hospital shall be seafaring men; the office of the directors is defined to be, to inspect the carrying on of the buildings, to state the accounts, and to make contracts; and to place the boys out as apprentices. The internal regulation of the hospital to be in the governor and council, as before mentioned. This charter was followed by an act of parliament, which vested in the commissioners thus incorporated, all the estates held in trust for the benefit of the Hospital.

PRINCIPAL OFFICERS. The principal officers of Greenwich hospital,

hospital, with their salaries, are as follow : a governor, 1000*l.* ; lieutenant-governor, 400*l.* ; four captains, 230*l.* each ; eight lieutenants, 115*l.* each ; a treasurer, 200*l.* ; secretary, 160*l.* ; auditor, 100*l.* ; two chaplains, 130*l.* each ; a physician, 182*l.* 10*s.* ; surgeon, 150*l.* ; steward, 160*l.* ; clerk of the checque, 160*l.* ; surveyor, 200*l.* ; clerk of the works, 91*l.* 5*s.* ; besides assistants and a great number of inferior officers. The officers are allowed, in addition to their salaries, a certain quantity of coals and candles, and fourteen pence a day in lieu of diet.

THE CEMETERY. In 1707, a piece of ground, lying on the east side of Greenwich park, 660 feet in length, and 132 in breadth, was given by Prince George of Denmark, to the hospital for the burial ground. It has been long disused ; another parcel of ground, containing about two acres and a half, having been appropriated for that purpose in 1749.

CHEST. The explanation of this institution is already given in describing the deduction of sixpence per month from the pay of each mariner, which is made by authority of parliament for the support of those who are past service. This admirable institution originated in 1588, on the suggestion of Sir Francis Drake, Sir John Hawkins, and some other public spirited commanders. The establishment, or chest, was kept at first at Chatham, and is most generally known by that description, but it has been removed to Greenwich. The duties relating to it are executed by supervisors, consisting of the first lord of the admiralty for the time being, the comptroller of the navy, and the governor and auditor of Greenwich hospital ; to whom are added five directors, with a secretary, accountant, and other officers.

OTHER CHARITABLE ESTABLISHMENTS. Besides this great national fund for relief, there are many less public establishments for the benefit of the navy. *Alms-houses* are provided in various parts of the kingdom to afford them retreats ; a *society* was formed, in 1793, for relief of the widows of sailors and soldiers ; in 1804, another arose under the care and patronage of their royal highnesses the Prince of Wales, the Duke of Clarence, and several other members of the royal family, called the *naval asylum for the maintenance and education of the orphans of sailors and marines* ; and there is an establishment called the *naval knights of Windsor*, of which the following account is given. Agreeably to the will of S. Travers, Esq. in the year 1724, seven old and infirm lieutenants, single and without children, were to be chosen naval knights of Windsor, each to have an apartment near the castle, and 60*l.* per annum, exclusive of the half pay, and the senior lieutenant to have 12*l.* per annum extra. They are not entitled to superannuation. The whole to be paid out

of two estates in Essex. The above bequest took effect November 27th, 1795, being the day his majesty signed the warrants, and seven gentlemen were appointed. When there are vacancies, lieutenants wishing to fill them must apply, with a testimonial of their qualifications, to the navy board, that one may be recommended to the admiralty. By the above will, thirty-seven sons of naval officers, from seven to twelve years of age, are admitted into the mathematical school of Christ's hospital, London. Sons of commissioned officers are preferred to those of warrant officers. The application is by petition to the governors.

TRANSPORT SERVICE. Returning to some further duties in which portions of the navy are occasionally engaged, it is necessary to mention the transport service, or the duty of supplying vessels and accommodations for troops ordered abroad on garrison or colony duty, or on expeditions. As ships for this express service cannot always be maintained by government, they are frequently hired by contract from merchants or other proprietors, and, sailing under the protection of king's ships, are called transports. They are laden with troops, both cavalry and infantry, with their horses, artillery, baggage, field equipage, and all other requisites for the service about which they are to be employed.

TRANSPORT OFFICE. This business is managed by four commissioners who have each 1000*l.* per annum, and under them are accountants, clerks, and other inferior officers, and they have agents stationed at most of the principal ports in Great Britain and abroad.

PRISONERS. One great department in this office is the superintendence, custody, and care of prisoners of war, which has been transferred to them from the sick and hurt office. The duty of this branch is to provide proper places of confinement, provisions, bedding and necessaries, for prisoners of war; to negotiate their exchange, carry the same into effect, by transporting them to the dominions of their respective sovereigns, and to bring back British prisoners in return; to pay all expences attending such services; and examine and pass the accounts of all persons employed in the execution thereof. They are also occasionally to visit the several prisons, to see that no abuses are committed, and the standing regulations properly attended to; to hear and redress grievances, and examine and pass accounts relative to this and the other parts of the service. Agents for prisoners are also established in all proper places.

OFFICE. The transport office is in Dorset-square, Westminster.

CONVOY. The right of a sovereign to prevent any of his subjects

subjects from incurring the danger of being captured by an enemy, even though desire of gain, or want of judgment, should render them unmindful of the peril, is evident, and the only effectual way of insuring this end at sea, is by the appointment of ships of force to accompany mercantile squadrons, for their protection. So long ago as the year 1336, Edward I. ordered that the merchant vessels should proceed on their voyages in large bodies for mutual safeguard, and on several subsequent occasions, he appointed armed convoys. In succeeding ages, this wholesome practice was continued and improved; but still the hope of extraordinary gain, from an opportune arrival and an expeditious voyage, rendered many indifferent to danger, and it was common in time of war to *run it*, as it was called, the profit forming a great allurements, and the ship being still insurable, though at an advanced premium. In 1798, parliament thinking it necessary to abolish this practice, prohibited ships from sailing without convoy, except in certain cases. The commander of every vessel sailing under the protection of a convoy is required to use his best endeavours to continue with the convoy; and if he sails without, or wilfully separates from the protecting ship during the passage, without leave obtained from the commanding officer of the convoy, he shall forfeit 1000*l.*, or, if naval stores form any part of his cargo, 1500*l.*; but the courts are authorized to mitigate these penalties in their discretion, so as not to bring them below 50*l.* Moreover, all policies of insurance, wherein the commander sailing without convoy, or deserting convoy, or any person interested in the vessel directing, or being instrumental in, such desertion of convoy, is concerned, are declared null and void; and every underwriter making any settlement on such a policy forfeits 200*l.* The officers of the customs are also directed not to clear out any vessel, till the commander give bond with proper security not to sail without, nor to desert, his convoy at sea. Vessels not required to be registered, those licensed by the admiralty to sail without convoy, or proceeding with due diligence to join a convoy, or bound to or from Ireland, or from any one port to another within Great Britain, those in the service of the East India company, the Hudson's Bay company, and in ballast, are exempted from the obligations and penalties of this act. Neither are ships, coming from foreign parts, where no convoy may have been appointed, liable to trouble or censure for sailing without one. Every commander of a merchant vessel is required to provide proper flags, yanes, and other articles necessary for making signals; to have a board, stuck up in a convenient place on board, containing that part of the act, 33 Geo. III. c. 66, for manning the navy, &c. which makes cap-
tains

tains of merchant ships under convoy liable to be articulated in the high court of admiralty, for disobeying signals or deserting convoy; and, in case of being boarded by an enemy, to destroy all instructions relating to the convoy. It was in consideration of this additional protection, that the tax already mentioned, called convoy duty, was imposed.

DUTY OF THE SHIPS CONVOYING. Commanders are to give instructions to their convoy; and to send a list of them to the secretary of the admiralty before they sail. They are to receive no gratification; to keep in sight of, and protect the ships; to inform against masters who misbehave, and to wear a top-light. The commander in chief may order his signals to be repeated by other ships under his command, if he thinks fit. Different convoys are to keep company, as long as their courses lie together; and, on those occasions, the eldest commander of a convoy is superior. Commanders of different convoys are to wear lights, and repeat signals, as flag officers. Convoys are to sail like divisions: and signals are to be made at separation. Commanders of convoys are to take under their care ships of his majesty's allies or friends.

TRINITY HOUSE. Several establishments and regulations of the utmost importance to the navy are under the guardianship of the corporation of the Trinity House, of which, and its dependent charities, the following is an account. The society of the Trinity House was founded at Deptford in 1515, by Sir Thomas Spert, knight, commander of the great ship *Henry Grace de Dieu*, and comptroller of the navy to Henry VIII. for the regulation of seamen, and the convenience of ships and mariners on the coast, and incorporated by the above-mentioned prince, who confirmed to them, not only the rights and privileges of the company of mariners of England, but their several possessions at Deptford, which, together with the grants of queen Elizabeth and Charles II. were also confirmed by letters patent of the first of James II. in the year 1685, by the name of "the master, wardens, and assistants of the guild or fraternity of the most glorious and undivided Trinity, and of St. Clements in the parish of Deptford Strand, in the county of Kent." This corporation is governed by a master, four wardens, eight assistants, and eighteen elder brethren; but the inferior members of the fraternity, named younger brethren, are of an unlimited number; for every master or mate, expert in navigation, may be admitted as such; and these serve as a continual nursery to supply the vacancies among the elder brethren when removed by death or otherwise. The master, wardens, assistants, and elder brethren, are by charter invested with the following powers: that of examining the mathematical children of Christ's Hospital;

pital; the examining of the masters of his majesty's ships; the appointing pilots to conduct ships into and out of the river Thames: and the amercing all such as shall presume to act as masters of ships of war, or pilots, without their approbation, in a pecuniary mulct of twenty shillings; settling the several rates of pilotage, and erecting light-houses and other sea-marks, on the several coasts of the kingdom, for the security of navigation, to which light-houses all ships pay one halfpenny a ton; granting licences to poor seamen, not free of the city, to row on the river Thames for their support, in the intervals of sea-service, or when past going to sea; the preventing of aliens from serving on board English ships, without their licence, upon the penalty of five pounds for each offence; punishing of seamen for desertion or mutiny in the merchants' service; and the hearing and determining the complaints of officers and seamen in the same employ, but subject to an appeal to the lords of the admiralty, or the judge of the court of admiralty. To this company belongs the *ballast office*, for clearing and deepening the Thames, by taking up a sufficient quantity of ballast, for the supply of all ships that sail out of the river; in which service sixty barges, with two men each, are constantly employed, and all ships that take in ballast, pay them one shilling a ton, for which it is brought to the ship's sides. In consideration of the increase of the poor of this fraternity, they are by their charter empowered to purchase in mortmain, lands, tenements, &c. to the amount of 500*l.* per annum; and also to receive charitable benefactions of well-disposed persons to the amount of 500*l.* per annum, clear of reprises. There are annually relieved by this company about 3000 poor seamen, their widows and orphans, at the expence of 6000*l.* The ancient hall at Deptford, where their meetings were formerly held, was pulled down about the year 1787, and an elegant building erected for that purpose, in London near the Tower. The arms of this corporation are, Arg. a cross G. between four ships of three masts in full sail proper.

TRINITY HOSPITALS. There are two hospitals at Deptford belonging to the corporation of the Trinity-House. The old one was built in the reign of Henry VIII. It consisted originally of twenty-one apartments; but being pulled down and rebuilt in 1788, the number was increased to twenty-five. This hospital adjoins to the church-yard. The other, which is in Church-street, was built about the latter end of the 17th century. Sir Richard Browne, in 1672, gave the ground, after the expiration of a short term; and captain William Maples, in 1680, gave 13,000*l.* towards the building. This hospital consists of fifty-six apartments, forming a spacious quadrangle; in the

the centre of which is placed a statue of Captain Maples. On the east side opposite the entrance, is a plain building, which serves both for a chapel and a hall. Here the brethren of the Trinity-house meet annually on Trinity-Monday, and afterwards go to Saint Nicholas's church, where they hear divine service and a sermon. The pensioners, in both hospitals, consist of decayed pilots and masters of ships, or their widows. The single men and widows receive about 18*l.* per annum; the married men about 28*l.*

LIGHT HOUSES AND SEA MARKS. Although by charter, the Trinity House possesses the controul of these most useful and important establishments, the erection of them, and of beacons for alarming the country on the approach of an enemy, is the undoubted prerogative of the crown. For this purpose the king has the exclusive power, by commission, under his great seal, to cause them to be erected in fit and convenient places, as well upon the lands of the subject, as upon the demesnes of the crown: which power is usually vested by letters patent in the office of lord high admiral. And by statute 8 Eliz. c. 13. the corporation of the Trinity House are impowered to set up any beacons or sea-marks wherever they shall think them necessary; and if the owner of the land or any other person shall destroy them, or shall take down any steeple, tree, or other known sea-mark, he shall forfeit 100*l.* or in case of inability to pay it, shall be *ipso facto* outlawed. Of sea-marks it is not necessary here to treat, since they are often casual, and in themselves unimportant, or designed for other uses, as protuberances of soil, trees, ruins, churches, and almost every other conspicuous fixed object, that can be imagined. On light-houses, the munificence of government, and the ingenuity of architects have been incessantly employed, and some are conspicuous monuments of skill, conducted to success by perseverance. They are placed in all situations on the coast where it is supposed they can conduce to safety; and the establishments in them all are framed on a plan combining utility with economy.

PILOTS. A pilot, in ancient times, was an officer permanently established on board every ship, and who alone on all occasions managed the helm, having, in fact, the government of the vessel under the master; but this classical sense is no longer applicable to practice, as pilots are now only taken on board for temporary service, as when the ship has any dangerous place to pass through, or is so near the shore that a more than ordinary skill is requisite to bring her safe off; but otherwise, such of the other mariners as are most capable of the function, are appointed to do it by turns. By various statutes passed in the reigns

reigns of George I. and George II. persons are prohibited from acting as pilots in the Thames or Medway, or on several parts of the coast, unless examined by the master and wardens of the society of Trinity House, and approved and admitted into the said society, at a court of load manage, by the lord warden of the Cinque Ports, or his deputy, and the said master and wardens, under the penalty for the first offence of 10*l.*; for the second 20*l.*; and for every other offence 40*l.*; to be sued for and recovered by any one in the court of admiralty for the Cinque Ports, if the offending pilot live within the jurisdiction of that court, or else by action in any of the courts at Westminster; one moiety to go to the informer, and the other to the master and wardens of the Trinity House, to be distributed among their superannuated pilots, and widows of pilots. And the master, and such wardens are appointed to examine into the skill and ability of any person, on his being admitted as a pilot, take an oath, given them by the register of the said court of load manage, or his deputy, binding themselves impartially to examine the qualifications of the candidate, and to make a true return. The names, ages, and places of abode of pilots are to be yearly assised in some public place, at the custom houses at London, and Dover or Deal, to which all persons may have recourse; and for not returning lists, the master and wardens forfeit 10*l.* But these acts do not prevent the master or mate of any ship or vessel, or any part owner, residing at Dover or Deal, or the Isle of Thanet, from piloting his own ship from any of the said places up the said rivers, nor subject any person, though not of that society, to the penalties before mentioned, who shall be employed by any master to pilot his vessel from the places aforesaid, when none of the Trinity-House pilots shall, within one hour after the arrival of the ship, be ready to pilot her; and masters of merchant ships may chuse their pilots; and for preventing exorbitant demands, fees are established according to her draught of water. The lord warden of the Cinque Ports is also empowered to nominate three persons there; to adjust differences between the master of any ship and others, where ships by bad weather are forced from their anchors and cables, for saving and bringing them ashore; and any person, though he is not a pilot, may assist a ship in distress. The pilots so admitted and licensed, are subject to the government of the Trinity-House, provided such regulations do not make the pilots keep terms or settle the rates of payment for their services; and pilots shall, within ten days after the receipt of their fees, pay the ancient dues, not exceeding one shilling in the pound, out of their hire, for the use of the poor of the corporation. And if pilots refuse to take the charge of any of his majesty's ships,

ships, when duly appointed, misbehave themselves in the conduct of any ships, or other part of their duty, or if they refuse to obey any summons or orders of the corporation, then the general court, on examination, are required to recal the warrants granted to such pilots; and if, after notice, they act as pilots, they shall be subject to the penalties inflicted on unlicensed pilots.

It is to be observed that there are also Trinity-Houses belonging to Dover, Deal, and the Isle of Thanet, and to Kingston upon Hull, and Newcastle upon Tyne, whose privileges are expressly protected against the operation of these statutes, as are also those of the Lord Mayor, commonalty, and citizens of London, and the jurisdiction of the admiralty.

SHIPWRECK. The dreadful calamity against which pilots are appointed as a protection, has been the subject of many laws calculated to restrain rapacity, and ensure for the wretched sufferers the possession of the residue of their effects. It has already been mentioned, (Vol. I. page 165,) that the property in wrecks is one of the rights of the crown. It was declared so by the prerogative statute, 17 Edw. II. c. 11. and was so, long before, at the common law. It is worthy observation, how greatly the law of wrecks has been altered, and the rigour of it gradually softened in favour of the distressed proprietors. Wreck by the antient common law was where any ship was lost at sea, and the goods or cargo were thrown upon the land; in which case these goods, so wrecked, were adjudged to belong to the king; for it was held, that, by the loss of the ship, all property was gone out of the original owner; but it was first ordained by Henry I. that if any person escaped alive out of the ship, it should be no wreck, and afterwards Henry II. by his charter, declared, that if on the coasts of either England, Poitou, Oleron, or Gascony, any ship should be distressed, and either man or beast should escape or be found therein alive, the goods should remain to the owners, if they claimed them within three months; otherwise they were to be esteemed a wreck, and belong to the king, or other lord of the franchise. This law was again confirmed with improvements by Richard I.; who, in the second year of his reign, not only established these concessions, by ordaining, that the owner, if he was shipwrecked and escaped, should enjoy all his effects, free and unmolested; but also that if he perished, his children, or, in default of them, his brethren and sisters should retain the property; and, in default of brother or sister, then the goods should remain to the king. The law, as laid down by Bracton in the reign of Henry III. seems still to have improved in its equity; for then, if not only a dog (for instance,) escaped by which the owner might be discovered, but if

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if any certain mark was set on the goods by which they might be known again, it was held to be no wreck; a regulation agreeable to reason; the rational claim of the king being only founded on this, that the true owner cannot be ascertained. Afterwards, in the statute of Westminster the first, the time of limitation of claims, given by the charter of Henry II. is extended to a year and a day, according to the usage of Normandy: and it enacts, that if a man, a dog, or a cat, escape alive, the vessel shall not be adjudged a wreck. These animals, as in Bracton, are only put for examples, for it is now held, that not only if any live thing escape, but if proof can be made of the property of any of the goods or lading which come to shore, they shall not be forfeited as wreck. The statute further ordains, that the sheriff of the county shall be bound to keep the goods a year and a day, (as in France for one year, agreeably to the maritime laws of Oleron, and in Holland for a year and a half,) that if any man can prove a property in them, either in his own right or by right of representation, they shall be restored to him without delay; but if no such property be proved within that time, they then shall be the king's. If the goods are of a perishable nature, the sheriff may sell them, and the money shall be liable in their stead. This revenue of wrecks is frequently granted out to lords of manors as a royal franchise: and if any one be thus entitled to wrecks on his own land, and the king's goods are wrecked thereon, the king may claim them at any time, even after the year and day. Wrecks, in their legal acceptance, are at present not very frequent; for if any goods come to land, it rarely happens, since the improvement of commerce, navigation, and correspondence, that the owner is not able to assert his property within the year and day limited by law. And in order to preserve this property entire for him, and, if possible, to prevent wrecks at all, our statutes have made many very humane regulations, in a spirit quite opposite to those savage laws, which formerly prevailed in all the northern regions of Europe, and a few years ago were still said to subsist on the coasts of the Baltic Sea, permitting the inhabitants to seize on whatever they could get as lawful prize; or as an author of their own expresses it, "*in naufragorum miseria et calamitate tanquam vultures ad predam currere.*" By the statute 27 Edw. III. c. 13, if any ship be lost on the shore, and the goods come to land (which cannot, says the statute, be called wreck) they shall presently be delivered to the merchants, paying only a reasonable reward to those that saved and preserved them, which is intitled *salvage*. Also by the common law, if any persons (other than the sheriff) take any goods so cast on shore, which are not legal wreck, the owners might have a commission to inquire and find them out, and compel them to make restitution.

restitution. And by statute 12 Anne, ft. 2. c. 18. confirmed by the 4 Geo. I. c. 12, in order to assist the distressed, and to prevent the scandalous illegal practices on some of our sea-coasts, (too similar to those on the Baltic,) it is enacted, that all head officers and others of towns near the sea, shall, upon application made to them, summon as many hands as are necessary, and send them to the relief of any ship in distress, on forfeiture of 100*l.* and in case of assistance given, salvage shall be paid by the owners, to be assessed by three neighbouring justices. All persons that secrete any goods, shall forfeit their treble value; and if they wilfully do any act whereby the ship is lost or destroyed, by making holes in her, stealing her pumps, or otherwise, they are guilty of felony, without benefit of clergy. Lastly, by the statute 26 Geo. II. c. 19, plundering any vessel either in distress, or wrecked, and whether any living creature be on board, or not; such plundering, or preventing the escape of any person that endeavours to save his life, or wounding him with intent to destroy him, or putting out false lights, in order to bring any vessel into danger, are all declared to be capital felonies; in like manner as the destroying of trees, steeples, or other stated sea-marks, is punished by the statute 8 Eliz. c. 13, with a forfeiture of 100*l.* or outlawry. Moreover by the statute of George II. pilfering any goods cast on shore is declared to be petty larceny; and many other salutary regulations are made, for the more effectually preserving ships of any nation in distress. Voluntary shipwreck by captains or masters of ships, whether for the purpose of injuring the owners, or defrauding the underwriters, is felony, without benefit of clergy; and by a statute made in 1772, the same penalty is denounced against those who shall burn or destroy ships of war or naval stores.

INVENTIONS. In speaking of shipwreck it would be improper to omit noticing two inventions calculated to diminish the distresses attendant on those disasters, by facilitating the restoration of property and the preservation of life. The first of these inventions is the *diving bell*, of which a hint is to be found in the works of Roger Bacon in the thirteenth century; in 1680, a machine was used in the West Indies, which enabled Sir William Phipps to recover in a place where a Spanish fleet had been lost, nearly 200,000*l.* in pieces of eight; but in 1776, Mr. Scalding completed the diving bell, in which the divers can lower themselves down, without fear of being overturned by rocks, or other impediments at the bottom, and can re-ascend to the surface at pleasure: and they can also, when at the bottom, move to a considerable distance from the spot on which theyighted. Some improvements have since been made; but, on the whole, the reputation of the plan is annexed to the

the memory of Mr. Spalding, who unfortunately fell a victim to his own art in Ireland in 1783. The other invention above alluded to, is called the *life-boat*. A project of a boat which could not be sunk or overset was tried in France in 1771; but in 1789, Mr. Greathead of South Shields formed one which has proved so generally useful, and so perfect in its construction, that it is, after the most satisfactory testimonies of its utility, now generally adopted, and one is kept at most of the harbours in the kingdom.

PORTS AND HARBOURS. From the most ancient times, the king has possessed the prerogative of appointing *ports* and *havens*, or such places only, for persons and merchandize to pass into and out of the realm, as he in his wisdom sees proper. By the feudal law, all navigable rivers and havens were computed among the *regalia*, and were subject to the sovereign of the state, and in England it has always been holden, that the king is lord of the whole shore, and particularly is the guardian of the ports and havens which are the inlets and gates of the realm; and therefore so early as the reign of king John, we find ships seized by the king's officers for putting into a place that was not a legal port. But though the king had a power of granting the franchise of havens and ports, yet he had not the right of resumption, or of narrowing and confining their limits when once established; but any person might load or discharge his merchandize in any part of the haven; whereby the revenue of the customs was much impaired and diminished by fraudulent landings in obscure and private corners. This occasioned the statutes of 1. Eliz. c. 11. and 13 and 14 Chas. II. c. 11. § 14. which enable the crown by commission to ascertain the limits of all ports, and to assign proper wharfs and quays in each, for the exclusive landing and loading of merchandize. Although the royal prerogative in the appointment of ports is undoubted, still it is fettered like all other prerogatives, by the privilege of parliament over the national purse; and hence it is to be observed, that although in late times, the establishment, enlargement and improvement of ports and havens, have been very frequent, yet those measures have never been effected by the king alone, but on every occasion an act of parliament has passed for the purpose. To every port a court is appendant for the adjudication of matters arising within its jurisdiction, the presiding officer in which was anciently called the port-reeve, but in more modern times a mayor and bailiffs have been generally substituted.

MEMBERS AND CREEKS. These are inferior descriptions, and places subordinate to and dependant on ports. In this sense ports are places to which the officers of the customs are appropriated.

priated, and which include all the privileges and guidance of all members and creeks thereunto allotted. Members are places where anciently a custom-house has been kept, and officers or deputies attending, and are lawful places of exportation or importation. Creeks are places where commonly officers are or have been placed, by way of prevention only, and are not lawful places of exportation or importation, without particular licence from the port or member under which they are placed. Thus Gravesend is a creek, belonging to the port of London; Plymouth is a port, of which Falmouth is a member, and Saint Mawes a creek.

CINQUE PORTS. The term cinque ports has already occurred several times in treating of naval affairs, and although, in modern times, these places are not exclusively devoted to any maritime use, but are merely regarded as portions of the realm enjoying some peculiar privileges, yet in consideration of their ancient state, and the frequent mention of them in all matters of maritime history, it is judged most proper to give some account of them here. The cinque ports are ancient trading towns lying to the sea coast, and as they were instituted for the defence and safety of the kingdom, several liberties and privileges were granted them. At first, the privileged ports were but three, Dover, Sandwich, and Romney; but Hastings and Hithe were added by William the Conqueror, to which Winchelsea and Rye were subsequently adjoined. Each of them now sends representatives to parliament; and though seven in number, are still called cinque ports. The charters of these ports are indisputably traced to the time of Edward the Confessor, and they were confirmed by the Conqueror, and by several subsequent kings. An ancient record or custumal of Hythe, mentions the state and duties of the cinque ports, when they were but five, in these terms. *Hastings* shall find one and twenty ships, and in every ship, one and twenty men and a boy. The members of this port are the sea-shore in Seaforth, Pevensey, Hodeney, Winchelsea, Rye, Ihame, Bekefbourne, Grengce, Northie and Bulwerheth. *Romney* finds five ships, men as Hastings; members, Promhell, Ledc, Eastwestone, Dengeinerys, and Old Romney. *Hithe*, ships and men as Romney; member, Westhithe. *Dover*, ships and men as Hastings; members, Folkstone, Feverham, and St. Margaret's; not for the land, but the goods and chattels. *Sandwich*, ships and men as Romney and Hithe; members, Fordwich, Reculver, Serre, and Deal, not for the soil, but for the goods. Sum of ships 57, men 1187, and 57 boys. This service the barons of the cinque ports do acknowledge to owe to the king, upon summons yearly, (if it happens,) for the space of fifteen days together, at their own costs and charges.

to be reckoned from the first day they spread their sails to depart for the place the king ordered; and to serve after the fifteen days at the king's pleasure, he paying them. In process of time the cinque ports grew so powerful, and by the possession of a warlike fleet so audacious, that they made piratical excursions in defiance of all public faith, and to the injury of British as well as foreign commerce; nay on some occasions, they made war and formed confederacies, as separate independent states, but these irregularities were soon suppressed when government was strong, and sufficiently confident to exert its powers. So long as the mode of raising a navy by contributions from different towns continued, the cinque ports afforded an ample supply; but since that time their privileges have been preserved, but their separate or peculiar services dispensed with.

THE LORD WARDEN. William the Conqueror, considering Dover castle the key of England, gave the charge of the adjacent coast, with the shipping belonging to it, to the constable of Dover castle, with the title of *Warden of the Cinque Ports*; an office resembling that of count of the Saxon coast, (*comes littoris Saxonici*) in the decline of the Roman power in this island. The lord warden has the authority of admiral in the cinque ports and their dependencies, with power to hold a court of admiralty; he has authority to hold courts both of law and equity, which will be noticed in a subsequent page; he is the general returning officer of all the ports, parliamentary writs being directed to him, on which he issues his precepts, and in many respects he was vested with powers similar to those possessed by the heads of counties palatine. At present the efficient authority, charge or patronage of the lord warden is not very great, the situation is however considered very honorable, and the salary is 3000*l.* He has under him a lieutenant and some subordinate officers, and there are captains at Deal, Walmer, and Sandgate castles, Archcliff fort, and Moat's Bulwark.

LAWS AFFECTING THE NAVY. As it is not intended in this division of the work to treat on the admiralty court, nor to mention courts martial till those affecting officers of the army can at the same time be considered it is only necessary here to mention one crime, and one regulation peculiarly affecting naval affairs, namely, piracy and quarantine.

PIRACY. The crime of piracy, or robbery and depredation on the high seas, is an offence against the universal law of society; a pirate being, according to Sir Edward Coke, an enemy of the human race. As therefore he has renounced all the benefits of society and government, and has reduced himself afresh to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him: so that every commu-

nity has a right by the rule of self-defence, to inflict that punishment upon him which every individual in a state of nature would have been otherwise entitled to do, for any invasion of his person or personal property. By the ancient common law, piracy, if committed by a subject, was deemed a species of treason, being contrary to his natural allegiance; and by an alien to be felony only: but now since the statute of treasons, 25 Edward III. c. 2. it is held to be only felony in a subject. Formerly it was only cognizable by the admiralty courts; which proceed by the rules of the civil law; but it being inconsistent with the liberties of the nation, that any man's life should be taken away, unless by the judgment of his peers, or the common law of the land, the statute 28 Hen. VIII. c. 15. established a new jurisdiction for this purpose; which proceeds according to the course of the common law. The offence of piracy, by common law, consists in committing those acts of robbery and depredation on the high seas, which if committed on land, would have amounted to felony there. But, by statute, some other offences are made piracy also; as by 11 and 12 W. III. c. 7. if any natural born subject commits any act of hostility upon the high seas, against others of his majesty's subjects, under colour of a commission from any foreign power; this, though it would only be an act of war in an alien, shall be construed piracy in a subject; and further, any commander, or other seafaring person, betraying his trust, and running away with any ship, boat, ordnance, ammunition, or goods; or yielding them voluntarily to a pirate; or conspiring to do these acts; or any person assaulting the commander of a vessel to hinder him from fighting in defence of his ship, or confining him, or making or endeavouring to make a revolt on board; shall, for each of these offences be adjudged a pirate, felon, and robber, and shall suffer death, whether he be principal, or merely accessory by setting forth such pirates, or abetting them before the fact, or receiving or concealing them or their goods after it; and the statute 4 Geo. I. c. 11. expressly excludes the principals from the benefit of clergy. By the statute 8 Geo. I. c. 24. the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in any wise consulting, combining, confederating, or corresponding with them; or the forcibly boarding any merchant vessel, though without seizing or carrying her off, and destroying or throwing any of the goods overboard, shall be deemed piracy: and such accessories to piracy as are described by the statute of William, are declared to be principal pirates, and all pirates convicted by virtue of this act, are made felons without benefit of clergy. By the same statutes also, (to encourage the defence of

of merchant vessels against pirates,) the commanders or seamen wounded, and the widows of such seamen as are slain, in any engagement with a pirate, shall be entitled to a bounty, to be divided among them, not exceeding one fiftieth part of the value of the cargo on board, and such wounded seamen shall be entitled to the pension of Greenwich Hospital; which no other seamen are, except only such as have served in a ship of war. And if the commander shall behave cowardly, by not defending the ship, if she carries guns or arms, or shall discharge the mariners from fighting, so that the ship falls into the hands of pirates, such commander shall forfeit all his wages, and suffer six months imprisonment; lastly by statute 18 Geo. II. c. 30. any natural born subject, or denizen, who in the time of war shall commit hostilities at sea against any of his fellow subjects, or shall assist an enemy on that element, is liable to be tried and convicted as a pirate.

QUARANTINE. The derivation of this word refers it to the term of forty days, which was prescribed in law for other purposes as well as that of keeping persons who might be infected with the plague apart from the society. Many regulations had been made by ancient statutes for preserving the public health from the ill effects which might have arisen, if those who arrived from places where that dreadful malady prevails, had been suffered without precaution to mingle with society; but these being found contradictory and insufficient, an act was passed in 1800, repealing all former statutes, and forming a new code on the subject. By this it is enacted, that all vessels, persons, and merchandizes, coming into any place in Great Britain, or the isles of Guernsey, Jersey, Alderney, Sark, or Man, from any place whence his majesty may judge the plague may be brought, shall perform quarantine in such manner as his majesty, by his order in council, and notified by proclamation, or published in the London Gazette, shall direct; and until such vessel, person, and merchandize, shall have performed quarantine, no person or goods shall come or be brought on shore unless licensed by his majesty. And the commander of every vessel liable to quarantine, who shall meet with any other vessel at sea, or within four leagues of the coast of Great Britain, or the said isles, shall hoist a signal to denote that his vessel is liable to quarantine; and on failure thereof, such commander or person having charge of such vessel shall forfeit 200*l*. The penalty on masters of vessels not liable to perform quarantine hoisting such signals is 50*l*.; and pilots conducting vessels liable to quarantine into places not appointed, forfeit 100*l*. For the purpose of ascertaining whether any suspected vessel has on board persons liable to perform quarantine or not, the

principal officer of the customs, or person authorised to see quarantine duly performed, shall go off to such vessel, and at a convenient distance from the same, demand of the commander, or person having charge thereof, to give an answer in writing or otherwise, and upon oath or not, as he shall be required, to all such questions as shall be put unto him in pursuance of any order of council; and upon refusal the master, &c. shall forfeit 200*l.* for every such offence. If the vessel is liable to perform quarantine, the officers of any ships of war, or forts, or garrisons, or other officers whom it may concern, shall upon notice, compel such vessel to go to the appointed place; and the master of every such vessel, coming from any place visited with the plague, or having any infected person on board, and concealing the same, shall be guilty of felony without benefit of clergy. The master is also obliged under a penalty of 500*l.* to deliver to the chief officer appointed to see quarantine performed, certain documents, and a schedule of his cargo, and if he afterward fail to produce any of the articles specified, he forfeits not more than 500*l.* nor less than 100*l.* And if the master of any vessel liable to perform quarantine shall himself quit, or knowingly permit any seaman or passenger to quit such vessel before such quarantine shall be performed, unless by a proper licence, or shall not, within a convenient time after notice, cause such vessel and lading to be conveyed into the place appointed to perform quarantine, he shall forfeit 500*l.*; and if any person shall so quit such ship contrary to the true meaning of this act, any person whatsoever, by any necessary force, may compel such person to return on board, who shall be imprisoned for six months, and shall also forfeit 200*l.* Vessels having performed quarantine in foreign parts, are not to land goods liable to infection, without directions from the privy council, under penalty of 200*l.* And all persons liable to perform quarantine shall be subject to the orders of the officers authorized to direct the performance thereof, who may enforce obedience thereto, and in case of necessity call in others to assist, who are required to assist accordingly; and may compel all persons liable to perform quarantine to repair, and to convey all goods comprized in any order made as aforesaid, to the lazaret, or place appointed in that behalf; and if any person shall neglect to duly repair to the place so appointed, or shall escape therefrom, he shall be deemed guilty of felony without benefit of clergy. And if any officer of the customs, or other person employed concerning quarantine shall be guilty of any wilful breach or neglect of duty, he shall forfeit his office, and also 100*l.*; and if he shall desert from his duty, or knowingly permit any person, vessel, or goods to depart or be conveyed out of the lazaret, ship, or place appointed, unless by

by an order of council, or shall give a false certificate, he shall be guilty of felony without benefit of clergy; and if any such officer shall wilfully damage any goods performing quarantine under his direction, he shall be liable to treble damages and costs of suit. And if any sound person shall enter any lazaret, he shall perform quarantine; and if he shall return from thence (unless duly licensed), or shall escape, or attempt to escape, he shall be guilty of felony without benefit of clergy. After the quarantine has been duly performed, and certified, the vessel is under no further constraint.

THE ARMY.

PREROGATIVE. The king as generalissimo of the whole kingdom has the sole power of raising and regulating armies, as well as fleets. This prerogative indeed was disputed and claimed, contrary to all reason and precedent, by the long parliament of Charles I. but, on the restoration of his son, was solemnly declared by the statute 13 Chas. II. c. 6. to be in the king alone: for that the sole supreme government and command of the militia within all his majesty's realm and dominions, and of all forces by sea and land, and of all forces and places of strength, ever was and is the undoubted right of his majesty, and his royal predecessors, kings and queens of England; and that both or either house of parliament cannot, nor ought to, pretend to the same. This statute, it is obvious to observe, extends not only to fleets and armies, but also to forts, and other places of strength, within the realm; the sole prerogative as well of erecting, as manning and governing of which, belongs to the king in his capacity of general of the kingdom: and all lands were formerly subject to a tax, for building castles, wherever the king thought proper. This was one of the three things, from contributing to the performance of which no hands were exempted; and therefore called by our Saxon ancestors the *trinoda necessitas*: sc. *pontis reparatio, arcis constructio, et expeditio contra hostem*. And this they were called upon to do so often, that, as Sir Edward Coke from M. Paris assures us, there were in the time of Henry II. 1115 castles subsisting in England. The inconveniences of which, when granted out to private subjects, the lordly barons of those times, were severely felt by the whole kingdom; for as William of Newburgh remarks in the reign of king Stephen, "*erant in Angliæ quodammodo tot reges vel potius tyranni, quot domini castellorum*;" but it was felt by none more sensibly than by the two succeeding princes, John and Henry III. And therefore the greatest part of them being demolished in the

barons' wars, the kings of after times have been very cautious of suffering them to be rebuilt in a fortified manner: and Sir Edward Coke lays it down, that no subject can build a castle, or house of strength embattled, without the licence of the king; because of the danger which might ensue, if every man at his pleasure might do it. In this precaution indeed the public liberty is most materially interested; a nation familiarised to the sight of military strong holds, and unused to travel, but under the regulations of garrison towns, is subdued without power to struggle: that which a lord can do is not forbidden to the king; and it is said to have been among the compendious hints which a subtle courtier gave to an English monarch, for the complete establishment of tyranny, that he should make all the roads in the kingdom pass through or begin and end at garrison towns. On the other hand, that safety against foreign irruption, or local violence may not be precarious, the statute called the bill of rights has provided that all the subjects of the realm may have arms for their defence suitable to their condition and degree, and such as are allowed by law.

GENERAL PROGRESS OF THE ARMY. In a land of liberty it is extremely dangerous to make a distinct order of the profession of arms. In absolute monarchies it is necessary for the safety of the prince, and arises from the main principle of their constitution, which is that of governing by fear: but in free states, the profession of a soldier, and taken singly merely as a profession, is justly an object of jealousy. In these no man should take up arms, but with a view to defend his country and its laws: he puts not off the citizen when he enters the camp; but it is because he is a citizen, and would wish to continue so, that he makes himself for a while a soldier. The laws, therefore, and constitution of these kingdoms, know no such state as that of a perpetual standing soldier, bred up to no other profession than that of war: and it was not till the reign of Henry VII. that the kings of England had so much as a guard about their persons, and then the establishment consisted only of fifty yeomen of the guards, whom the king appointed in 1486.

In the time of our Saxon ancestors, as appears from Edward the Confessor's laws, the military force of this kingdom was in the hands of the dukes or heretochs, who were constituted through every province and county; being taken out of the principal nobility, and such as were most remarkable for being wise, loyal, and valiant. Their duty was to lead and regulate the English armies, with a very unlimited power, as to them should seem fitting, for the honour of the crown, and welfare of the realm. And because of this great power they were elected by the people in their full assembly, or folkmote. This large
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share of power, thus conferred by the people, though intended to preserve the liberty of the subject, was perhaps unreasonably detrimental to the prerogative of the crown : and accordingly we find a very ill use made of it by Edric duke of Mercia, in the reign of king Edmund Ironside ; who, by his office of duke or heretoch, was entitled to a large command in the king's army, and by his repeated treacheries at last transferred the crown to Canute the Dane.

It seems universally agreed by all historians that king Alfred first settled a national militia in this kingdom, and by his prudent discipline made all the subjects of his dominion soldiers : but we are unfortunately left in the dark as to the particulars of this his so celebrated regulation ; though, from what was last observed, the dukes seem to have been left in possession of too large and independent a power : which enabled duke Harold on the death of Edward the Confessor, though a stranger to the royal blood, to mount the throne in prejudice of Edgar Atheling, the rightful heir.

On the Norman conquest, the feudal law was introduced in all its rigour, the whole of which is built on a military plan ; all the lands in the kingdom were divided into what were called knight's fees, in number 60,215 ; and for every knight's fee, a knight or soldier, *miles*, was bound to attend the king in his wars, for forty days in a year ; in which space of time, before war was reduced to a science, the campaign was generally finished, and a kingdom either conquered or victorious. By these means the king had, without any expence, an army of sixty thousand men, always ready at his command. This personal service in process of time degenerated into pecuniary commutations or aids, and the last traces of the military part of the feudal system were abolished at the restoration, by statute 12 Chas. II. c. 24.

In the mean time the kingdom was not left wholly without defence in case of domestic insurrections, or the prospect of foreign invasion. Besides those who by their military tenures were bound to perform forty days service in the field, first the assize of arms, enacted 27 Hen. II. and afterwards the statute of Winchester, under Edward I. obliged every man, according to his estate and degree, to provide a determinate quantity of such arms as were then in use, in order to keep the peace ; and constables were appointed in all hundreds by the latter statute, to see that such arms were provided. These weapons were changed by the statute 4 and 5 Ph. and Mary, c. 2. into others of more modern service ; but both this and the former provisions were repealed in the reign of James I. While these continued in force, it was usual from time to time,
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for our princes to issue commissions of array, and send into every county, officers in whom they could confide, to muster and array (or set in military order) the inhabitants of every district; and the form of the commission of array was settled in parliament in the 5th of Hen. IV. so as to prevent the insertion of any new penal causes; but it was also provided that no man should be compelled to go out of the kingdom at any rate, nor out of his shire but in cases of urgent necessity; nor should provide soldiers unless by consent of parliament. About the reign of Henry VIII. or his children, lieutenants began to be introduced as standing representatives of the crown; to keep the counties in military order; for we find them mentioned as known officers in the statute 4 and 5 Ph. and M. c. 3. though they had not been then long in use, for Camden speaks of them in the time of queen Elizabeth, as extraordinary magistrates constituted only in times of difficulty and danger; but the introduction of these commissions of lieutenancy, which contained in substance the same powers as the old commissions of array, caused the latter to fall into disuse.

In this state things continued, till the repeal of the statutes of armour in the reign of James I. after which, when Charles I. had, during his northern expeditions, issued commissions of lieutenancy, and exerted some military powers, which, having been long exercised, were thought to belong to the crown, it became a question in the long parliament, how far the power of the militia did inherently reside in the king; being now unsupported by any statute, and founded only on immemorial usage. This question, long agitated with great heat and resentment on both sides, became at length the immediate cause of the fatal rupture between the king and his parliament; the two houses not only denying this prerogative of the crown, the legality of which perhaps might be somewhat doubtful; but also seizing into their own hands, the entire power of the militia, the illegality of which step could never be any doubt at all.

Soon after the restoration of Charles II. when the military tenures were abolished, it was thought proper to recognize the sole right of the crown to govern and command the militia, and to put the whole into a more regular method of military subordination: and the order, in which the militia now stands by law, and which will soon claim particular attention, is principally built on the statutes which were then enacted.

When the nation was engaged in war, more veteran troops and more regular discipline were esteemed to be necessary, than could be expected from a mere militia; and therefore at such times more rigorous methods were put in use for the raising of armies, and the due regulation and discipline of the soldiery: which

which are to be looked upon only as temporary excrescences bred out of the distemper of the state, and not as any part of the permanent and perpetual laws of the kingdom. For martial law, which is built upon no settled principles, but is entirely arbitrary in its decisions, is, as Sir Matthew Hale observes, in truth and reality no law, but something indulged rather than allowed as a law. The necessity of order and discipline in an army is the only thing which can give it countenance; and therefore it ought not to be permitted in time of peace, when the king's courts are open for all persons to receive justice according to the laws of the land. The petition of right moreover enacts, that no soldier shall be quartered on the subject without his own consent; and that no commission shall issue to proceed within this land according to martial law. And whereas after the restoration, Charles II. kept up about five thousand regular troops, by his own authority, for guards and garrisons; which James II. by degrees increased to no less than thirty thousand, all paid from his own civil list; it was made one of the articles of the bill of rights, that the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law. But, as the fashion of keeping standing armies, which was first introduced by Charles VII. in France, in 1445, has of late years universally prevailed over Europe, it has also, for many years past, been annually judged necessary by our legislature, for the safety of the kingdom and the defence of its possessions, to maintain even in time of peace a standing body of troops, under the command of the crown; who are however *ipso facto* disbanded at the expiration of every year, unless continued by parliament.

In fact, the indispensable duty of observing and regulating our conduct by the events which are daily passing around us, requires that the rigour of the principle against standing armies should be relaxed, or perhaps that the axiom itself should receive from practice a new construction. It may safely be affirmed that it is illegal for the monarch by his own prerogative, or out of any monies which he may possess in his own right, or with which he may be supplied by any other means than by the authority of parliament, to keep up a standing army; but that which parliament declares to be law, is legal, and the popular safety now requires that the popular jealousy should no longer be directed against a regular and well trained military force, maintained even in time of peace in very considerable numbers, and attended with all the means of giving perfection to such an establishment, as places for the exercise of artillery, schools and colleges for the instruction of youth intended for the military profession, and all other requisites for the attainment of knowledge and enforcement of

of discipline. The safety of the realm demands that a military body of sufficient magnitude and perfectly taught, should always be ready for our protection against sudden or premeditated design, but the safety of the subject also requires that the checks on the power of the crown with respect to military bodies, should be most tenaciously maintained. The right of parliament to fix the number and issue the sums required for pay, the annual mutiny act, the prohibition to extend martial law beyond its proper bounds, and the strict observance of all laws which tend to prevent the soldier from being effectually separated from the citizen, will ever afford ample security against the incroachments of prerogative, while the valour and loyalty of the military body will be sufficient to protect the realm, and divert into other quarters the fury of hostile operations. Ever since the revolution the standing military force has been augmenting, and, far from producing any evil, war has never been undertaken, but regrets have been expressed that its extent was not greater, and schemes are perpetually imagined for rendering it more ample and efficient. In the reign of William III. the standing force in peace was 25,000 men; Queen Anne, after the peace of Utrecht, was obliged, in order to garrison her conquests, and in conformity with general practice, to maintain a still larger force; after the peace of Aix-la-chapelle in 1748, the troops on the English and Irish establishments, exclusive of those on foreign stations, amounted to 26,000; after the peace in 1763, domestic and foreign duty demanded 40,000; on the peace in 1783 the force was fixed at 50,000, and in 1787 advanced to 60,000. After the great struggle against France in the war begun in 1793, and on the conclusion of peace at Amiens, in 1802, arrangements to reduce the war establishment were made; but the reduction was very trifling. The second battalions of those regiments that received drafts from the militia, were, according to agreement, discharged; the fencibles were disbanded; and the militia disembodied.—Most of the foreign corps were discharged; the invalid companies were disbanded; and in their stead seven battalions, from the invalids and out-pensioners, incorporated. These new regulations being thus arranged, the standing army of Great Britain rested at thirty five regiments of horse and dragoons; eight battalions of artillery besides their followers; seven battalions of foot guards; 96 regiments of infantry of 102 battalions; nine West India regiments; seven garrison battalions; and the regiment called the Queen's Germans, that so highly distinguished itself in Egypt; the whole amounting to about 75,000 men.

WAR ESTABLISHMENT. Thus far, following in general, the
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steps of the learned commentator on the laws of England, the army has been viewed as affecting the internal policy of the realm, and as connected in time of peace with the general state and government of the kingdom. As a war establishment, it is necessary to analyze its various parts, and to consider its formation, regulations, pay and allowances, and official establishments.

FORMATION. The general or gross division of the military force, is into regulars and irregulars, the former composed of troops enlisted for life or during his Majesty's pleasure, to be employed on all services, and paid out of funds assigned for that purpose by parliament; the latter of militia, volunteers, fencibles, and other troops varying in some essential particulars from the regulars. Each of these bodies is again composed of cavalry, or men on horseback, and infantry or soldiers on foot; besides which there are regiments of artillery, and corps of engineers. The regular cavalry are divided into life guards, of which there are two regiments; royal horse guards, one regiment; dragoon guards, seven regiments; and dragoons, heavy and light, twenty four regiments: of foot guards there are three regiments; and of foot soldiers exclusive of guards, one hundred regiments, besides eight West India regiments; three garrison battalions; nine royal veteran battalions; four regiments of foreign fencible cavalry, and several miscellaneous corps, as new South Wales and Royal Africans; and the foreign regiments, as the King's German legion, the regiments of De Rolle, Dillon, Chasseurs Britanniques, and Corsican rangers, and of artillery and engineers each a regiment. Of these forces, it is not possible to state the exact amount, but it is calculated to exceed 260,000 men. The militia, and other irregular forces are supposed to carry the number of men armed for the defence of the country and its possessions, exclusive of the navy and marines, beyond 800,000 men.

RANK. The degrees of rank of commissioned officers in the army are; in the first division, called that of general officers, field marshals, generals, and lieutenant and major generals; in the division of field officers, colonels not being general officers, lieutenant colonels, and majors; captains not having higher rank in the army form a class by themselves, and under them is the division called subaltern officers, consisting of lieutenants, cornets of horse and ensigns of foot. The general duties of officers consist in exercising, and submitting to command, according to their stations, and in attending with scrupulous exactness to all the regulations of discipline and all the rules of social propriety; their failure in any of the former, as, being absent without leave, and many other instances, would subject them to be superseded, and with respect to the latter,

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the system of honour is carried to the highest degree of strictness; a system which is absolutely necessary to preserve that exactness of behaviour which makes every one free and equal, without danger of encroachment, and properly respectful without suspicion of fear, or any other unworthy motive. The separate duty of each individual officer is not easily discriminated, and the recital would lead to explanations too technical for this work. There are also in the regiments, both of cavalry and infantry, officers of an inferior description, called non-commissioned, as serjeants and corporals.

COMPARATIVE RANK. The Comparative rank of officers in the navy and army is as follows :

<i>Navy.</i>		<i>Army.</i>
Admiral of the fleet	-	equal with Field-marshal.
Admirals	-	equal with Generals.
Vice-admirals	-	equal with Lieutenant-generals.
Rear Admirals	-	equal with Major-generals.
Commodores, and first captains to commanders in chief	}	equal with Brigadier-generals.
Captains of three years post		
Other post Captains	-	equal with Lieutenant-colonels.
Commanders	-	equal with Majors, and
Lieutenants	-	equal with Captains.

PRIVATES. In treating of the situation of private soldiers, it will be necessary, in many points, to consider the mode of recruiting the army, and the particular regulations to which its members are subject.

RECRUITING. For augmenting or supplying the ranks of the regular army, no compulsory means, like those used to sailors, can be resorted to; but parties, under the command of commissioned officers, are employed in the various portions of the kingdom, called recruiting districts, for the purpose of engaging men to serve, by the offer of such bounty as the government thinks proper to allow.

PAYMASTERS OF RECRUITING DISTRICTS. For each recruiting district, there is a *paymaster* appointed by special military commission, under the sign manual, and not removeable, except by command of the king, or by sentence of a court-martial. He is amenable in the ordinary course, to martial law, for every part of his conduct; but he is not liable to receive orders touching the manner of making up his pay lists and accompts, unless under a special instruction in writing, from the commander in chief of the forces, the secretary at war, or the inspector-general of the recruiting service. His allowance is similar to that of a captain, but he has no military rank.

RECRUITING OFFICERS. For the purpose of obtaining recruits, active non-commissioned officers are employed, under the name of recruiting-serjeants; and in many places crafty persons are dispersed, who, by every pretence and every artifice, allure the unwary to embrace the military life, and for this a compensation is allowed. These persons, in vulgar phrase, are called crimps. Houses are also opened in towns and cities, under the title of recruiting-offices, where the same arts are employed, and with which the persons, called crimps, have daily communication.

INLISTING. To prevent those, who in an incautious moment, may have made an engagement of which they afterward repent, from being permanently fettered, against their better judgment, the law has provided, that when any person shall be inlisted, he shall, in four days, but not sooner than twenty-four hours, be carried before the next justice, or chief magistrate of a town corporate (not being an officer in the army), and before him shall be at liberty to declare his dissent to such inlisting; and on such declaration, and returning the inlisting-money, and paying 20s. for the charges expended on him, he shall be forthwith discharged, in presence of such magistrate: but if he shall refuse or neglect, in twenty-four hours, to return, and pay such money as aforesaid, he shall be considered as inlisted. If he declares that he voluntarily inlisted himself, the justice, or chief magistrate, reads over, or in his presence causes to be read, a certain portion of the articles of war, and lets him take the oath of fidelity, and another, declaring his age, and place of birth, and his freedom from rupture, fits, and some other disorders, and that he is not an apprentice, nor belongs to any other regiment, regulars, or militia. But if any person shall receive the inlisting-money, knowing it to be such, and shall abscond, or shall refuse to go before a magistrate, he shall be deemed inlisted, as if he had taken the oath. And when any corps beyond seas is relieved, in order to return home, such of the men as chuse it may be inlisted, and incorporated with those appointed to remain; the occasion of quitting such former corps to be recited in the inlisting certificate, in order to protect such soldier from suspicion of desertion.

MUSTER. The recruit, having been attested before a magistrate, is to be mustered by a commissary, or muster-master, previous to his being received into a regiment. For the prevention of frauds in this part of the service, it is directed, that every commissary or muster-master, upon any muster to be made, shall, on penalty of 50/. and the loss of his office, give convenient notice to the mayor, or other chief officer, of the place where the soldiers are quartered; (except Westminster

ster and Southwark, where it must be two magistrates, neither of whom is an officer in the army;) and the mayor, or other chief officer shall be present, and give his utmost assistance for the discovering of any false muster; and no muster-roll shall be allowed, unless signed by such mayor, or other officer: but, if he shall not attend, or refuse to sign, without giving sufficient reason; then the commissary may proceed, and such muster-roll shall be allowed, though not signed, provided that oath be made, and the muster-roll produced before, and signed by a justice in 48 hours afterward; he certifying that there appears no sufficient objection to it. And if any person shall give a false certificate, to excuse any soldier from muster, or service, on pretence that he is employed on some other duty of the regiment, or of sickness, being in prison, or on furlough, he shall forfeit 50*l.* and be cashiered, and disabled to hold any military office. No certificate shall excuse the absence of any soldier, but for the reasons abovementioned, or one of them; and the commissary shall set down on the roll, at the time of taking the muster, the reason of such absence, and by whom certified: and not to set down any such excuse, without view of such certificate. Every officer that shall make any false muster of man or horse, and every commissary, muster-master, or other officer, who shall wittingly allow, or sign the muster-roll wherein any such false muster is contained, or shall take any reward for mustering, or signing muster-rolls, shall be cashiered, and disabled. If any person should be falsely mustered, or offer himself to be falsely mustered; he shall on proof be committed to the house of correction for ten days; and if any person shall wittingly furnish a horse to be mustered, he shall, if the property of the person furnishing, be forfeited to the informer; otherwise, the offender shall forfeit to the informer 20*l.* or, for want of sufficient distress, be committed to the common jail for three months, or be publicly whipped; and the informer, if a soldier, shall be discharged, if he demands it. But fictitious names, allowed by his majesty's order upon the muster-rolls for the maintenance of widows of officers who lost their lives in the late war, or during the late rebellion, shall not be construed a false muster.

RECRUITING STAFF. The army depot for recruits was formerly at Chatham: it is now in the Isle of Wight, and a staff for this branch of service is established, consisting of an inspector-general, with an assistant, and aid-de-camp; a brigade-major, adjutant, quarter-master and paymaster, a physician, and inspector of hospitals, with a deputy, and a surgeon, with assistants and mates.

BILLETING. It has already been mentioned as one of the
 'op-

oppressions practised while the government of England was unsettled, that soldiers were sent to live at free quarters on those whose conduct or principles gave offence to government. Against this abuse, it was enacted, by statute 31 Ch. II. c. 1, that no officer, military or civil, nor any other person whatsoever, shall presume to place, quarter, or billet any soldier on any subject or inhabitant of this realm, of any degree, quality, or profession whatsoever, without his consent; and every such subject or inhabitant may refuse to sojourn or quarter any soldier, notwithstanding any command, order, warrant, or billeting whatever. But by the mutiny act, which is renewed annually, and generally with little or no alteration, the constables, and other chief officers and magistrates of cities, towns, and villages, and other places, and in their default or absence, any one justice inhabiting in, or near such place, and no other, shall and may quarter and billet the officers and soldiers in inns, livery-stables, ale-houses, victualling-houses, and the houses of sellers of wine by retail to be drunk in their own houses, or places thereunto belonging (other than persons who keep taverns only, being free of the Vintners' company in London), and all houses of persons selling brandy, strong waters, cyder, or metheglin, by retail, to be drunk in their houses, and no other, and in no private houses whatsoever; nor shall any more billets be ordered than there are effective soldiers; and if any constable, or such like officer, or magistrate, shall presume to quarter or billet any officer or soldier in any private house, without consent, the owner or occupier shall have his remedy at law against such officer or magistrate for damages; and if any military officer shall take upon him to quarter soldiers otherwise than by this act, or shall offer any menace or compulsion to any mayor, constable, or other civil officer, tending to deter and discourage any of them from doing their duty, he shall, on conviction before any two of the next justices, by the oath of two witnesses, be *ipso facto* cashiered and disabled to hold any military employment; provided the conviction be affirmed at the next quarter sessions, and a certificate transmitted to the judge advocate, who shall certify it to the next court-martial. And if any person shall be aggrieved by having more soldiers billeted than in proportion to his neighbours, and complain to one justice, or if the person so billeting them be a justice, then if he complain to two justices, they may relieve him. The king's regiments of foot guards are to be in like manner billeted in Westminster, or other parts of Middlesex, except the city of London, and Surry, including the borough of Southwark, and places adjacent to Westminster; but this clause is construed as not confining the foot-guards to these places, but only directing that if quartered there, the same rules must be observed as in

other parts of the kingdom. If any constable, or other officer, neglect his duty in billeting for the space of two hours, provided sufficient notice has been given before of the arrival of the forces; or if he takes any reward to excuse any one; or if any person liable refuses to receive any soldiers, or to furnish them, as required by this act, they incur a penalty, not exceeding 5*l.* nor less than forty shillings. And if any military officer takes money of any person for excusing the quartering of soldiers, he shall be cashiered, and incapacitated. Officers and soldiers, duly billeted, are to be received, and furnished with diet and small beer, paying for the same, at a certain fixed, but very inadequate price. But if any person shall chuse rather to furnish them with candles, vinegar, and salt, and with either small beer, or cyder, not exceeding five pints a day, *gratis*, and allow them the use of fire, and the necessary utensils for the dressing and eating their meat, and shall give notice thereof to the commanding officer, and shall furnish the same accordingly; in such case, they shall provide their own victuals, and the officers shall pay the sums out of the subsistence-money for diet and small beer to such soldiers, and not to the persons on whom they are quartered; except on a march, or recruiting. In all places, where horse or dragoons shall be quartered, the men and their horses shall be billeted in one and the same house (except in case of necessity); and in no case there shall be less than one man billeted, where there shall be one or two horses, nor less than two men where there shall be four horses, and so in proportion; and each man shall be billeted as near his horse as possible. Officers may remove, or exchange men or horses with others quartered in the same town; provided the numbers so exchanged are equal: and the constables, or other officers, shall billet them accordingly.

BARRACKS. Such are the principal features of the regulation for billeting or quartering of soldiers, which has ever been deemed a grievous hardship on innkeepers, and no inconsiderable cause of disorder and insubordination among the troops. Yet, as an ancient custom, it had many advocates, especially among those who looked with extreme jealousy at any system which appeared to separate the soldiery from the people. In late years, however, the plan of building barracks for the residence of soldiers, has very much prevailed. Of this system, the opposition to it, and the advantages derived from it, the following account was given by Mr. Rose: "Another department, that of providing barracks for the troops, created a few years ago, has been the subject of repeated discussion in parliament, and of frequent observation without doors: every effort was used that ingenuity could devise to render the measure unpopular, and to impress on the public mind a persuasion, that immense sums of money

money were lavished, without any apparent use or necessity. In a measure intimately connected with the safety and defence of the country, economy alone is not to be attended to: we are persuaded, however, the arrangement is to be justified, even on this ground, and that on an attentive consideration of the subject, it will be found there is a saving to the public during war of about 400,000*l.* a year by the system (after deducting the expences attending it), without taking into the calculation the great saving by the preservation of horses. In this, as in other instances, we must not lose sight of the nature of the war in which we are engaged; whatever reliance we may justly have on our navy, the glorious achievements of which have been above all praise, as well as beyond all example, and on the powerful aid of our yeomanry, incited by an unparalleled enthusiasm in the cause of their country, we should not neglect the attention due to our brave army and militia, at the same time we employ their services in the stations best calculated for our defence. In many parts of the country the troops could not have been kept on the coast in the winter, if barracks had not been provided; but what is most interesting to our feelings, and important to the state, is, the saving of the lives of the soldiers, by their being comfortably lodged in barracks instead of being exposed to the consequences of encampments, particularly, late in the year. The advantages accruing to the discipline and good conduct of the army, are obvious, even to common observers." To prove the benefits already derived from the plan, he subjoined to his work (edition 1799) the following table:

Statement of the comparative Expence of keeping Troops in Camp, in Quarters, and in Barracks.

Considering the present establishment of the army, the regiments of cavalry may be stated at 675, officers and men, each; and the infantry at 726; at which numbers it may be proper to take them: for, although there are many regiments on much higher establishments, yet, on the whole, the above appears to be a just average.

A regiment of cavalry of 675 men and officers, in camp for 160 days (the usual time for encampment) will cost	}	<i>£.</i>	<i>s.</i>	<i>d.</i>
The same in barracks for the same period		11,200	0	0
		4,123	0	0
Saving	-	7,077	0	0

A regiment of infantry of 726 men, for 160 days, will cost in camp	}	3,516	0	
The same in barracks for the same period		1,000	0	
Saving	-	2,516	0	0
2		There		

There are in Great Britain, Guernsey, and Jersey, &c. barracks for 107,359 men, and for 10,419 horses; of which, sufficient to contain 102,161 men and 8,218 horses, are situated where camps must otherwise have been formed: it may therefore be stated, that if those barracks had not been provided, the troops must have been placed in camp for 160 days.

Taking, consequently, 8212 men and horses,	£.	s.	d.
which will compose twelve regiments of			
cavalry, the saving, at 7,076 <i>l.</i> 19 <i>s.</i> 8 <i>d.</i>	84,923	0	0
each regiment, will be	-	-	-
And deducting the above cavalry from			
120,161 men, there will remain 93,943	321,920	0	0
infantry, which will compose 128 regi-			
ments, at 2,515 <i>l.</i> each, making	-	-	-

Total saving in 160 days 406,843 0 0

The comparative expence of keeping troops in barracks and in quarters on the publicans, is 4*l.* 7*s.* 11½*d.* for each horse, and 3*s.* 0½*d.* for each man per annum, less in the former case than in the latter, which, taken on the number before stated, of 10,419 horses, and 107,359 men, will be 61,278*l.* 6*s.* 9*d.* per annum; from which should be deducted the fair wear and tear of different articles. But as this calculation is made on the full issue of all the articles allowed in the barracks, and as there is a considerable saving made, in consequence of the power vested in the barrack-master-general, to give only what may be sufficient, according to the construction of the different barracks; and as there are other savings to the amount nearly of 10,000*l.* per annum, the whole may safely be taken at least at 30,000*l.* per annum, and will leave the above sum clear.

	£.	s.	d.
The annual saving therefore, between keep-			
ing men in quarters, and in barracks,	61,278	6	9
will be in favour of the latter	-	-	-
And adding thereto the saving of encamp-	406,843	0	0
ments	-	-	-
	468,121	6	9
Total expence of the barrack establishment	30,712	0	0

The total saving by barracks annually will be 437,409 6 9

The above statement is independent of the original cost of the buildings and supply of stores; but it must appear, that

the past savings have gone very far towards defraying the same.

The following, according to the latest published account, is a List of Barracks in Great Britain, with the number of men which can be received in each.

BARRACKS.	Cavalry.		Infantry.	
	Officers & men.	Horses.	Officers & men.	Horses.
Aberdeen - - - N. B.	—	—	579	4
Alderney - - -	—	—	434	—
Alwick Green, Bognor -	—	—	758	—
Arundel - - -	342	340	—	—
Athford - - -	—	—	2188	40
Ayr - - - N. B.	—	—	464	4
Barnstaple - - -	62	63	—	—
Barn Rock - - -	—	—	84	—
Battle - - -	—	—	943	120
Belhaven - - -	326	320	—	—
Bellericay - - -	—	—	206	—
Berryhead - - -	—	—	1050	20
Berwick - - -	—	—	642	—
Bexhill - - -	—	—	939	50
Birmingham - - -	188	188	—	—
Blackheath - - - N. B.	—	—	51	—
Blatchington - - -	234	219	724	—
Bogner, (see Alwick) -	—	—	—	—
Bopeep, (see Hastings) -	—	—	—	—
Braybourn Lees - - -	185	170	2265	—
Bridport - - -	62	63	—	—
Brighton - - -	705	715	752	—
Canterbury - - -	1154	1089	2600	—
Carlisle - - -	—	—	144	—
Chatham - - -	—	—	2148	—
Chelmsford - - -	—	—	4040	—
Chester - - -	—	—	54	—
Chichester - - -	350	340	982	—
Christchurch - - -	62	63	—	—
Colchester - - -	480	450	6785	—
Coventry - - -	216	193	—	—
Croydon - - -	384	372	—	—
Cuckmere Haven - - -	—	—	124	4
Danbury - - -	—	—	831	—

BARRACKS.	Cavalry.		Infantry.	
	Officers & men.	Horses.	Officers & men.	Horses.
Dalkeith	—	—	160	—
Deal	149	141	2260	—
Dorchester	395	400	—	—
Dover	—	—	215	—
Dunbar	—	—	1128	—
Dunbarton	—	—	163	—
Dungeness	—	—	512	33
Dundee	—	—	538	4
Eastbourn	183	63	668	—
Edinburgh	—	—	1858	—
Exeter	416	412	—	—
Eyemouth	—	—	75	—
Feverham and Ospring	280	280	2100	—
Fort Augustus	—	—	297	2
— Charlotte	—	—	272	—
— Cumberland	—	—	1350	—
— George	—	—	1840	—
— Monkton	—	—	503	—
— William	—	—	481	—
Forton	—	—	700	—
Fulwell	—	—	460	—
Glasgow	—	—	1040	—
Gosport	—	—	694	—
Guernsey	—	—	4696	59
Guilford	501	537	—	—
Haddington	326	310	1128	—
Haylsham	—	—	982	—
Hamilton	189	202	—	—
Hampton Court	139	171	—	—
Harwich	—	—	1586	—
Haslar	—	—	821	—
Haltings and Bopcep	187	170	554	—
Herring House	—	—	68	—
Hilsea	—	—	1515	—
Honiton	81	85	—	—
Horsham	—	—	2440	—
Hounslow	316	329	—	—
Hull	—	—	2138	—
Hurst Castle	—	—	68	—
Hyde Park	290	385	—	—
Hythe	262	262	3378	145

Ipswich

THE ARMY.

23

BARRACKS.	Cavalry.		Infantry.	
	Officers & men.	Horses	Officers & men.	Horses.
Ipswich - - - -	1108	1156	5911	—
Jersey - - - -	—	—	5771	22
Kennington - - -	46	52	—	—
Kew - - - -	—	—	67	—
Kingsbridge - - -	—	—	531	—
King Street - - -	39	384	—	—
Knightbridge - - -	—	—	502	4
Langney Point - - -	—	—	278	—
Langward Port - - -	—	—	416	—
Leith - - - - N. B.	—	—	136	—
Lewes - - - -	512	510	2218	—
Littlehampton - - -	—	—	379	—
Liverpool - - - -	—	—	104	—
Lymington - - - -	—	—	934	—
Maidstone - - - -	679	148	2100	—
Maldon - - - -	187	180	1206	—
Manchester - - - -	349	353	—	—
Maker - - - -	—	—	343	—
Margate and Westgate - - -	—	—	400	—
Medina Mill - - - -	—	—	500	—
Modbury - - - -	65	63	—	—
Musselburgh - - - N. B.	—	—	1728	—
Newcastle and vicinity - - -	—	—	2500	—
Newport, Isle of Wight - - -	—	—	22	—
Norman Cross - - -	—	—	1266	—
Norwich - - - -	252	266	750	—
Northampton - - -	126	124	—	—
Nottingham - - - -	189	186	—	—
Ospring, (see Faversham) - - -	—	—	—	—
Ottery - - - -	—	—	605	—
Out Posts, Isle of Wight - - -	—	—	118	5
Pendennis and St. Mawes - - -	—	—	1125	—
Parkhurst, Isle of Wight - - -	—	—	1705	—
Perth - - - - N. B.	189	188	159	—
Pevensey - - - -	—	—	757	—
Piquets, Essex - - -	113	21	—	—
Piers Hill - - - - N. B.	357	368	—	—
Pleydon (see Rye) - - -	—	—	—	—
Plymouth - - - -	221	210	7790	—
Port Patrick - - - N. B.	—	—	24	—
— Chester - - - -	—	—	1074	—

BARRACKS.	Cavalry.		Infantry.	
	Officers & men.	Horses.	Officers & men.	Horses.
Port Seaton - - -	—	—	300	—
Portman Street - - -	—	—	571	—
Portsmouth and Portsea - - -	—	—	2057	—
Preston (see Port Seaton) - - -	—	—	—	—
Queensbury House - - -	—	—	800	—
Radipole - - -	430	340	—	—
Ramsgate - - -	169	161	829	—
Riding Street - - -	—	—	940	12
Ringmer - - -	—	—	140	136
Romford - - -	364	378	—	—
Romney - - -	187	172	—	—
Rye and Pleydon - - -	187	172	—	—
Sandhurst - - -	—	—	102	—
Sandown, Isle of Wight - - -	—	—	435	13
Savoy - - -	—	—	50	—
Scarborough - - -	—	—	118	—
Scilly - - -	—	—	108	—
Seaton Sluice and House - - -	—	—	—	—
Selfea - - -	—	—	304	—
Silver Hill - - -	—	—	2132	—
Sheernefs - - -	—	—	585	—
Sheffield - - -	175	182	—	—
Shorcham - - -	187	170	616	—
Southampton - - -	62	63	10	—
St. Mawes, (see Pendennis) - - -	—	—	—	—
Steyning - - -	—	—	984	—
Stirling - - - N. B.	—	—	927	—
Stonar - - -	157	160	—	—
Sunderland - - -	—	—	156	—
Taunton - - -	62	63	—	—
Tilbury Fort - - -	—	—	198	—
Tontine, (see Queensbury) - - -	—	—	—	—
Tornefs - - -	62	63	—	—
Tower - - -	—	—	455	—
Trowbridge - - -	62	63	—	—
Truro - - -	215	310	—	—
Tynemouth - - -	—	—	483	—
Upnor - - -	—	—	93	—
Wareham - - -	62	63	—	—
Weely - - -	374	360	3925	—
Westgate, (see Margate) - - -	—	—	—	—

Weymouth

BARRACKS.	Cavalry.		Infantry.	
	Officers & men.	Horses.	Officers & men.	Horses.
Weymouth - - -	—	—	377	—
Whitburn (see Fulwell) -	—	—	—	—
Windfor - - -	222	220	642	—
Winchelsea - - -	—	—	150	—
Winchester - - -	—	—	3533	—
Woodbridge - - -	724	720	4165	—
Woolwich - - -	—	—	215	—
Worthing - - -	—	—	158	—
Ycalm - - -	—	—	190	—
Yarmouth - - -	—	—	1020	—
——— Isle of Wight -	—	—	286	6
York - - -	261	266	—	—
	16854	16467	138410	897

BARRACK OFFICE. The barrack department was originally formed in May, 1793, and gradually increased until it was erected into an establishment completely distinct from all others, by a warrant from the king, the 24th of March, 1794, and was enlarged in 1796 and 1797. It is under the following officers.

BARRACK MASTER GENERAL, 40s. per day, 40s. extra, and travelling expenses.

DEPUTY BARRACK MASTER GENERAL, 20s. per day, 20s. extra, and travelling expenses.

ASSISTANT BARRACK MASTERS GENERAL, one at 15s. per day, and travelling expenses: three at 10s. per day each, and travelling expenses.

ASSISTANT BARRACK MASTER GENERAL, for supplies, 300l. per annum, and 5s. per day extra.

ACCOUNTANT, 374l. per annum, and 100l. per annum extra.

ASSISTANT BARRACK MASTER GENERAL for North Britain, 300l. per annum, 50l. rent, with coals, candles, and travelling expenses.

ASSISTANTS TO DITTO, two at 10s. per day each, and travelling expenses.

The officers in the building department are :

ASSISTANT BARRACK MASTER GENERAL, 10s. per day, and travelling expenses.

CHECKING CLERK, 200l. per annum.

ARCHITECTS AND SURVEYORS, 2*os.* per day, 2*os.* extra, and travelling expenses, when in the country.

ASSISTANTS TO DITTO, one at 1*os.* ditto, 1*os.* ditto, another at 10*ol.* per annum.

AGENT, 53*ol.* per annum, for self and clerks.

OFFICE. The office is in Spring Gardens.

BARRACK MASTERS. Every one of the barracks above-mentioned is under the controul of an officer, called the Barrack-master, for whose regulation in the performance of his duties, his majesty by warrant, dated 24th March, 1795, directed that officers commanding in barracks, and the barrack-master, in all matters relative to the accommodation, disposition, and supply of the troops stationed therein, shall be under the direction of the *barrack master general*, to whom all applications and requisitions are to be made. Every barrack master shall, upon notice from the barrack master general, or on production of the route by which troops are ordered to march, attend the arrival of such regiment or detachment, as is ordered to quarter in any barrack within his district; and having, with the commanding officer, or with such officer as he may appoint, viewed the condition of the said barrack, and of every room and part thereof, and of the furniture and utensils thereto belonging, shall deliver the same to such officer, with an inventory under his hand, stating its particular condition; two copies of which inventory are to be signed by the commanding officer, and returned to the barrack master, one of which he will forthwith transmit to the barrack master general. And, from the time of such delivery, the commanding officer shall stand charged with the said barrack furniture and utensils, according to the inventory, until such regiment or detachment is relieved, or ordered away; and the like method shall be observed both by officers and barrack masters, on every relief, or removal. And after delivery made, and receipts taken, the barrack masters are not to exchange any articles, unless it be certified by the commanding officer that they have been rendered useless by fair wear. These certificates to be transmitted with the barrack master's accounts, as also receipts for the subsequent delivery.

Each barrack master is to make frequent inspections of the barracks under his care, and of the appurtenances, and report the state to the barrack master general: and on the removal of troops, report what new furniture is necessary, that due means may be taken to supply it. But in case inspection is not made in due time, or the demand is not brought by the barrack master, immediately after inspection, the damage must be made good by himself.

Every barrack master, when a regiment, or detachment, marches

marches in or out of a barrack, is to make a return to the barrack master general, by the next post, specifying the particular regiment, or detachment, the commanding officer's name, number, and other particulars; and on every quarter day, transmit to the barrack master general a return of the state of the barracks and furniture, and how the apartments of the barrack have been occupied for the three months preceding; which returns are to be countersigned by the commanding officers, who are personally and diligently to inspect the same.

The barrack master general takes care that sufficient firing, candles, and other stores, be provided for each barrack. And they are to be delivered out to the troops by the barrack masters, in due times and proportions, and the deliveries must be minutely vouched. The barrack masters must also transmit to the barrack master general, a weekly return of the number of officers and men to whom barrack stores have been issued for the preceding week: and half yearly accounts of expenditures with vouchers.

In case of neglect of duty in the barrack master, the commanding officer is to report it to the barrack master general; and, if on inquiry it shall appear that he has neglected to pay due obedience to orders, an inspector is to be sent down at his expence to take possession of the barracks, until every cause of complaint be removed; the barrack-master general takes cognizance of all matters relative to accommodation, disposition, and supply of troops in barracks, reporting thereon, when requisite, to the secretary at war. And all officers, and barrack masters are to obey such orders and directions as the barrack master general finds necessary to be given thereon.

On the arrival of a regiment in barracks, the soldiers are supplied by the barrack master with one pair of clean sheets to each bed, for which 3*d.* per pair is paid for a double, and 2*d.* for a single bed; the same every month when they are changed, for washing: they are also supplied with one round towel per week, fixed on a roller, the washing of which costs one penny: the rooms besides are furnished with every necessary article for the convenience and comfort of the soldiers.

Barrack stores are only allowed from the day on which the issue takes place. And all barrack masters are strictly enjoined not to allow any commutation either in money or otherwise for the same.

The rooms for the quarter-masters and serjeants of cavalry, and the serjeant major, and the quarter master serjeant, are furnished in the same manner as those of the soldiers; those of the officers have a few additional conveniences.

When there is a sufficient number of rooms in a barrack, subalterns

subalterns of infantry may have one each, and the full allowance of coals and candles.

The officers, commanding in each of the cavalry barracks, where *forage* is issued, transmit to the barrack master general a weekly return of the number of horses for which it has been delivered, and also the name and rank of each officer, with the number of horses for which he has received rations of forage; and when required a general statement of the quantity of forage received, and actually issued to the troops.

The rations of forage to be issued to the horses of officers and soldiers, actually effective in the barracks, are as follow:

	Rations.		Rations.
Field officers, each	4	Quarter masters, non-	} 1
Captains, each	3	commissioned officers	
Subalterns, and staff officers, each	2	and privates, each	

For each of these rations 8½*d.* per day is stopped.

Each stable is furnished with the necessary utensils. Many other regulations are prescribed for the comfort of the troops, the enforcement of regularity and the prevention of fraud, but of a nature too minute to be here inserted.

PAY. It has appeared proper to place in one view the pay allotted to officers and privates in the army, with the general regulations affecting them. Whenever money is wanted for the service of the army, the *pay-master general*, by a memorial delivered to the treasury, states the particular sums required, and prays that they may be issued to the governor and company of the Bank of England on his account. On receiving this memorial, the lords of the treasury direct the auditor of the exchequer to issue the money as requested, which is placed to an account kept in the books of the bank, in the name of the paymaster of the forces; so that no money is paid immediately from the exchequer into his hands, but he, or his deputy, draws for it as wanted upon the bank, and inserts in his draft the heads of service to which the sums are to be applied. In the first memorial of each month to the treasury, the pay-master general specifies the balance of public money then lying in the bank on his account; which balance, on his death or removal, vests in his successor. He also makes up an annual account, to the 24th of December, of the ordinary and extraordinary services of the army, signed and attested by every pay-master-general who may have paid or discharged any part of the said account. This account is transmitted, together with proper vouchers, to the auditor

auditor of the imprest, who within six months examines, and, if satisfactory, presents it to the proper officer for declaration; after which an acquittance in the usual form is given to the pay-master.

REGIMENTAL PAY-MASTERS. Pay-masters in the corps of the line cannot hold any other commission; they rank as captains in their respective regiments, have baggage and forage money the same, and chuse rooms in barracks or quarters according to the dates of their commissions; but they have no military command. They give security to the secretary at war; themselves in 2000*l.* and two sureties in 1000*l.* each. In the militia, the security is, the principal 1000*l.* and the sureties 500*l.* each. The above sums become forfeit on proof of malefaction, neglect of duty, or consideration directly or indirectly given to obtain the appointment. In regiments of the line their pay is 15*s.* per day; in the militia they are allowed to hold another commission, and their pay made up to the above sum; they hold their situation by a commission from his majesty, and are not removeable but by his command, or the sentence of a general court-martial. When there is a vacancy in any regiment, of a paymaster, the accounts are to be taken by the major, or, if he is absent, the commanding officer, and the next two officers in seniority, are to act as a committee, to make up and transmit the pay-lists and other accounts to the agent, for which trouble, on special application to the secretary at war, they are remunerated. When a pay-master is appointed to a regiment on foreign service, he is only allowed 5*s.* per day till he joins: the remainder going to those who do the duty in his absence; a clerk is allowed to the pay-master who is not borne in addition to the number of the corps, for which an allowance of 1*s.* 6½*d.* is made per day. The pay-master has an allowance of 20*l.* per annum for postage and stationary.

For the regulation of regimental pay-masters, rules are laid down tending at once to render their duty easy and certain, and to prevent fraud. Their office also includes that of muster-master. They are amenable, in the ordinary course, to martial law for every part of their conduct relating to military discipline, or subordination; but they are not liable to receive orders touching the manner of making up their pay-lists and accounts, unless under a special instruction, in writing, from the officer commanding in chief on the station, if abroad; or, if at home, from the king, through the commander in chief of the forces, or the secretary at war. In case of imputed misdemeanour in the execution of office, it is in the power of the commanding officer in chief on the station if abroad, (but of no other), to suspend them from duty, until proper inquiry can be made into the

the charges alleged, and to provide, in such manner as the commander in chief shall think fit, for the temporary supply of the department. In case of a pay-master's death, or incapacity from accident, his papers of accounts are taken into the possession of the major, if present; if not, of the commanding officer, and the two officers next in seniority, who act as a committee of pay-mastership, and make up and transmit the several pay lists and accounts, at the same periods and under the like regulations as are prescribed for pay-masters, until further provisions. Their pay is 15*s.* per day, with an allowance of 20*l.* a year for stationary and postage.

The following Table exhibits a view of the daily Pay of the commissioned and non-commissioned Officers, and Privates, in the regular forces.

	Life Guards.			Horse Guards.			Foot Guards.			Dragoons.			Foot Artillery.			Horse Artillery.			Infantry.		
	Subst.	Full Pay.		Subst.	Full Pay.		Subst.	Full Pay.		Subst.	Full Pay.		Subst.	Full Pay.		Subst.	Full Pay.		Subst.	Full Pay.	
Colonel	1	7	0	1	16	0	1	11	0	1	11	0	1	10	0	1	12	10	1	2	6
Colonel (en 2d)	1	3	3	1	11	0	1	2	6	1	9	6	1	1	6	1	3	0	1	3	8
Lieutenant Colonel	0	19	0	1	6	0	1	7	0	1	7	0	1	18	6	1	4	0	1	15	11
Second ditto	0	18	0	1	4	0	1	6	0	1	6	0	1	12	6	1	4	0	1	15	11
Major	0	12	0	1	16	0	1	11	0	1	11	0	1	12	6	1	4	0	1	14	1
Second ditto	0	8	3	0	11	0	1	6	0	1	6	0	1	6	0	1	4	0	1	14	1
Captain	0	7	3	0	8	6	1	11	0	1	14	0	1	6	0	1	4	0	1	9	5
Lieutenant	0	8	3	0	11	0	1	6	0	1	6	0	1	6	0	1	4	0	1	9	5
Second ditto	0	7	3	0	8	6	1	11	0	1	14	0	1	6	0	1	4	0	1	9	5
Cornet	0	8	3	0	11	0	1	6	0	1	6	0	1	6	0	1	4	0	1	9	5
Ensign	0	8	3	0	11	0	1	6	0	1	6	0	1	6	0	1	4	0	1	9	5
Adjutant	0	4	9	0	6	0	1	6	0	1	6	0	1	6	0	1	4	0	1	9	5
Quarter Master	0	4	9	0	6	0	1	6	0	1	6	0	1	6	0	1	4	0	1	9	5
Pay Master	0	4	9	0	6	0	1	6	0	1	6	0	1	6	0	1	4	0	1	9	5
Senior Surgeon	0	9	0	0	12	0	0	9	0	0	12	0	0	7	6	0	11	10	0	11	4
Surgeon	0	8	0	0	10	6	0	7	6	0	10	6	0	7	6	0	11	10	0	11	4
Affiliant ditto	0	8	0	0	10	6	0	7	6	0	10	6	0	7	6	0	11	10	0	11	4
Veterinary ditto	0	8	0	0	10	6	0	7	6	0	10	6	0	7	6	0	11	10	0	11	4
Solicitor	0	8	0	0	10	6	0	7	6	0	10	6	0	7	6	0	11	10	0	11	4
Serjeant Major	0	3	9	1	0	0	0	3	0	0	4	0	0	3	0	0	3	11	0	3	4
Serjeant	0	3	9	1	0	0	0	3	0	0	4	0	0	3	0	0	3	11	0	3	4
Corporal	0	3	9	1	0	0	0	3	0	0	4	0	0	3	0	0	3	11	0	3	4
Kettle Drummer	0	3	9	1	0	0	0	3	0	0	4	0	0	3	0	0	3	11	0	3	4
Private	0	3	2	1	0	0	0	2	6	0	3	1	0	2	4	0	2	4	0	2	4

Besides the particulars contained in the table, there are a few circumstances to be mentioned respecting each division.

LIFE GUARDS. To these two regiments there is one marshal, with a salary of 2*g*l. per annum; and a stoppage of 1*s*. 3*d*. is made for each horse, from the non-commissioned officers and privates. In the *Horse and Dragoon Guards* and *Dragoons*, the same stoppage is made.

FOOT GUARDS. The drum-major has 1*s*.; the drummer 1*s*. 2½*d*., the deputy marshal 9*d*. and the hautbois 1*s*. per day subsistence.

FOOT ARTILLERY. The men are divided into three classes; *bombadiers*, whose daily pay is 1*s*. 10½*d*.; first gunners, 1*s*. 7*d*.; and second gunners, 1*s*. 3½*d*.

HORSE ARTILLERY. In these regiments, are *bombadiers*, with the daily pay of 2*s*. 0½*d*.; gunners, 1*s*. 5½*d*.; gunner drivers, 1*s*. 3½*d*. farriers and smiths, 3*s*. 4½*d*., and collar makers and wheelers, 2*s*. 0½*d*.

INFANTRY. In these regiments, the adjutant has an extra allowance of 2*s*. per day for a horse, and the surgeon is also obliged to keep one.

ENGINEERS. The pay and persons employed about this service differ so widely from those in other regiments, that it is necessary to state them separately, as well as some other heads incident to the service.

Pay of the Royal Engineers. First colonel commandant, 2*l*. 4*s*.; second ditto, 2*l*. 4*s*.; first colonel, 1*l*. 4*s*.; second ditto 1*l*.; first lieutenant colonel, 17*s*.; second ditto, 15*s*.; captain 10*s*.; captain lieutenant, 7*s*.; first lieutenant, 6*s*.; second ditto, 5*s*.; brigade major, 10*s*.

Pay of the Military Surveyors and Draughtsmen. Chief surveyor and draughtsman, 15*s*.; first assistant ditto, 12*s*.; second ditto, 10*s*.; first class of surveyors and draughtsmen, 7*s*. 6*d*.; second ditto, 5*s*.; third ditto, 4*s*.; cadet ditto, 2*s*.

Pay of the Military Artificers. Serjeant major, 2*s*. 9½*d*.; serjeant, 2*s*. 3½*d*.; corporal, 2*s*. 0½*d*.; artificer and drummer, 1*s*. 2½*d*.; labourer, 1*s*.

Pay of the Royal Waggon Train. Lieutenant colonel commandant, 18*s*.; major, 14*s*. and allowance for a horse, 2*s*.; captain, 9*s*. 5*d*. and allowance for a horse, 2*s*.; cornet, 4*s*. 8*d*. and allowance for a horse, 2*s*.; adjutant, 5*s*.; surgeon, 11*s*. 4*d*.; veterinary surgeon, 8*s*.; quarter master, 3*s*.; serjeant, 2*s*. 2*d*.; corporal, 1*s*. 7½*d*.; drummer, 1*s*. 3*d*.; collarmaker, 3*s*.; wheelwright, 3*s*.; smith, 3*s*.; farrier, 3*s*.; driver, 1*s*.

Pay of the Quarter Master General's Department. Quarter master general in time of war, 3*l*. per day; deputy quarter master general, 2*l*.; assistant quarter master general, 15*s*.

In time of war, field officers, resident in the different districts, are employed as assistants to the quarter master general: they receive pay according to their rank; during which time their regimental pay ceases. Lieutenant colonel, (including 1s. 6d. per day, in lieu of a servant), 1l. 4s. 6d.; major, ditto, 1l. 0s. 9d.

Pay of the *General Hospital Staff*. Physician 1l.; purveyor (including 5s. for a clerk) 1l. 5s.; deputy purveyor, 10s.; surgeon 15s.; ditto of a recruiting district, 10s.; apothecary, 10s.; hospital mate, 6s. 6d.; ditto on foreign service, 7s. 6d.; military superintendant, (beside regimental pay), 5s.; superintendant quarter master serjeant 2s. 0³/₄d.

Pay of the *Recruiting Staff*. The inspecting field officers are generally taken from the half pay; each is allowed 10s. per day for this service, in addition to the full pay of his regimental rank, which is made up to him yearly. They are also allowed the actual expence of postage and stationary.

The adjutant is allowed 3s. per day for this service, in addition to the full pay of his regimental rank, which is made up to him also yearly if he is on half pay.

Two serjeants (one to act as serjeant major, and the other as clerk) to the district are allowed, each an additional pay of sixpence per day. The surgeon is allowed 10s. per day, and the paymaster 15s.

Officers of cavalry chosen for these situations, receive the full pay of their regimental ranks as infantry.

The paymaster is allowed 20l. per annum for stationary; also 8s. per week for lodging, and a serjeant, whose additional pay is 6d. per day.

Pay of the General Officers, and others, on the Staff; shewing also the nett Amount, after Deductions for Poundage, Civil List, and Hospital.

	Per day.			Per annum.			Per annum nett.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
General - -	6	0	0	2190	0	0	2019	15	0
Lieutenant general	4	0	0	1460	0	0	1346	10	0
Major general -	2	0	0	730	0	0	673	5	0
Brigadier general	1	10	0	547	10	0	504	18	9
Brigade major -	0	10	0	182	10	0	168	6	3
Aid-de-camp -									

No deductions are made for poundage, civil list, or hospitals, on foreign service.

The following tables will be found of great utility in estimating the strength and expence of armies.

Pay of a Regiment of Cavalry for 1, 31, and 365 Days, according to the Strength established by the War Office, June, 1802.

	For 1 day.	For 31 days.	For 365 days.
	£. s. d.	£. s. d.	£. s. d.
1 Colonel -	1 12 10	50 17 10	599 4 2
2 Lieutenant colonels -	2 6 0	71 6 0	839 10 0
2 Majors -	1 18 6	59 13 6	702 12 6
8 Captains -	5 16 8	180 16 8	2129 3 4
8 Lieutenants -	3 12 0	111 12 0	1314 0 0
8 Cornets -	3 4 0	99 4 0	1168 0 0
1 Adjutant -	0 10 0	15 10 0	182 10 0
1 Paymaster -	0 15 0	23 5 0	273 15 0
1 Surgeon -	0 11 4	17 11 4	206 16 8
1 Assistant ditto	0 8 6	13 13 6	155 2 6
1 Veterinary ditto	0 8 0	12 8 0	146 0 0
8 Quarter-masters	2 4 0	68 4 0	803 0 0
1 Serjeant major	0 3 11	6 1 5	79 9 7
1 Paymaster serjeant	0 2 11	4 10 5	53 4 7
1 Armourer ditto	0 2 11	4 10 5	53 4 7
1 Sadler as serjeant	0 2 11	4 10 5	53 4 7
24 Serjeants -	3 10 0	108 10 0	1277 10 0
24 Corporals -	2 17 0	88 7 0	1040 5 0
8 Trumpeters -	0 18 8	28 18 8	340 13 4
376 Privates -	37 12 0	1165 12 0	13724 0 0
80 Ditto dismounted	5 0 0	155 0 0	1825 0 0
558 Nett pay	73 17 2	2289 12 2	26958 5 10

Exclusive of other expences, &c.

Pay of a Regiment of Infantry for 1, 31, and 365 Days, according to the Strength established by the War Office, June, 1802.

	For 1 day.	For 31 days.	For 365 days.
	£. s. d.	£. s. d.	£. s. d.
1 Colonel -	1 2 6	34 17 6	410 12 6
2 Lieutenant colonels -	1 11 10	49 6 10	580 19 2
2 Majors -	1 8 2	43 13 2	514 0 10
10 Captains -	4 14 2	145 19 2	1718 10 10
12 Lieutenants -	3 8 0	105 8 0	1241 0 0
27 Carried over	13 4 8	379 4 8	4465 3 4

8 Ensigns

	For 1 day.			For 31 days.			For 365 days.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
27 Brought over -	13	4	8	379	4	8	4465	3	4
8 Ensigns -	1	17	4	57	17	4	681	6	8
1 Adjutant -	0	10	0	15	10	0	182	10	0
1 Quarter-master	0	5	8	8	15	8	103	8	4
1 Paymaster	0	15	0	23	5	0	273	15	0
1 Surgeon -	0	11	4	17	11	4	206	16	8
2 Assistant ditto	0	15	0	23	5	0	273	15	0
1 Serjeant major	0	2	0 $\frac{3}{4}$	3	3	11 $\frac{1}{4}$	37	12	9 $\frac{3}{4}$
1 Quarter-master serjeant -	0	2	0 $\frac{3}{4}$	3	3	11 $\frac{1}{4}$	37	12	9 $\frac{3}{4}$
1 Pay serjeant	0	1	6 $\frac{3}{4}$	2	8	5 $\frac{1}{4}$	28	10	3 $\frac{1}{4}$
1 Armourer fer- jeant -	0	1	6 $\frac{3}{4}$	2	8	5 $\frac{1}{4}$	28	10	1 $\frac{1}{4}$
30 Serjeants	2	6	10 $\frac{1}{2}$	72	13	1 $\frac{1}{2}$	855	9	4 $\frac{1}{2}$
40 Corporals	2	7	6	73	12	6	866	17	6
22 Drummers	1	5	2 $\frac{1}{2}$	39	1	5 $\frac{1}{2}$	460	1	0 $\frac{1}{2}$
710 Privates -	35	10	0	1100	10	0	12957	10	0
847 Nett pay	58	15	10	1822	10	10	21458	19	2

Exclusive of clothing, appointments, contingencies, barracks, bedding, fuel, forage, marching, and other expences, and allowance in the different situations and departments, &c.

HALF PAY, AND PENSIONS. The following Tables shew the half-pay allowed to officers, and the pensions to their widows.

Half-pay of the Army.

Rank.	Cavalry.			Infantry.		
	Per day.		Per annum.	Per day.		Per annum.
	£.	s.	d.	£.	s.	d.
Colonel -	0	13	0	237	5	0
Lieutenant colonel	0	10	0	182	10	0
Major -	0	8	0	146	0	0
Captain -	0	5	6	100	7	6
Lieutenant -	0	3	0	54	15	0
Cornet, Ensign	0	2	0	45	12	6
Adjutant -	0	2	0	36	10	0
Quarter Master	0	2	0	36	10	0
Pay-master -	0	7	6	136	17	6
Surgeon -	0	6	0	109	10	0

* This half pay on the Irish establishment is 12s. 6d. per day; £228. 2s. 6d. per annum.

Rank.	Cavalry.						Infantry.					
	Per day.			Per annum.			Per day.			Per annum.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.
Assistant ditto	0	3	0	54	15	0	0	3	0	54	10	0
Surgeon to a recruiting district	-	-	-	-	-	-	0	5	0	91	5	0
Inspector of hospitals	-	-	-	-	-	-	1	0	0	365	0	0
Deputy ditto	-	-	-	-	-	-	0	12	6	228	2	6
Hospital mate	-	-	-	-	-	-	0	2	0	36	10	0
Apothecary	-	-	-	-	-	-	0	5	0	91	5	0
Commissary	0	15	0	273	15	0	-	-	-	-	-	-

The deduction made from an officer on the British establishment is $2\frac{1}{2}$ per cent. and if he is not on the spot to receive it himself, he gives $2\frac{1}{2}$ per cent. more to his agent: it is always paid half yearly; two months, or sooner, after it became due.

Pensions to the Widows of commissioned Officers.

Colonel	-	-	-	-	-	£ 80
Lieutenant colonel	-	-	-	-	-	50
Major	-	-	-	-	-	40
Captain, physician, purveyor	-	-	-	-	-	30
Lieutenant, surgeon, apothecary, pay-master	-	-	-	-	-	25
2d lieutenant, cornet, ensign, quarter-master, adjutant, assistant surgeon, veterinary surgeon	-	-	-	-	-	20
Deputy purveyor, Hospital mate	-	-	-	-	-	16
Quarter-master of dragoons	-	-	-	-	-	16

The widows of officers on half pay of the British establishment, are not intitled to the pension: in Ireland they receive it. The quarter-master's widow is not intitled to this pension, farther than his majesty's gracious consideration.

CLOTHING. The power of fixing and altering the uniform, both in the land and sea service, belongs to the king, and is exercised by orders from the commander in chief. On the elegance and utility of dressing whole military bodies in the same apparel, it is unnecessary here to make any observations. The origin of the practice has occasioned some dispute; the French writers claim it for Lewis XIV. and perhaps justly as to whole armies, for, as before his time, the feudal practice of arming, on the requisition of the sovereign, was not altogether discontinued, it is not probable but that every person coming in so sudden

sudden a manner into the field, dressed himself in such cloaths as he could easily obtain ; but long before the days of Lewis XIV. large bodies of troops in royal pay, both in England and in other countries, received from the sovereign who engaged them uniform dresses. Henry VII. for example, gave his yeomen of the guard an uniform which continues to this day ; and, on another occasion, an order was issued for apparelling a troop of 1000 in clothing all alike. It is not intended here to describe the uniform of officers in the different regiments ; every one is allowed to be at once splendid and commodious, and in point of appearance, the military have no rivals ; the only division of opinion they create, being to which particular variation of dress the preference is due. The regulations respecting clothing issued by his majesty, are as follow :

Cavalry. In a regiment of *Dragoon Guards*, or *heavy Dragoons*, each serjeant, corporal, trumpeter, and private, has for clothing, one hat and one pair of gloves annually. One coat, one waistcoat, and one pair of breeches, once in every two years.

In a regiment of *Light Dragoons*, each serjeant, corporal, trumpeter, and private has, for clothing, one pair of gloves annually ; one upper and one under jacket, one flannel waistcoat, and one pair of leather breeches, once in two years. One helmet once in three years ; and one watering cap once in four years.

In the *Royal Waggon Train*, each serjeant has for clothing, a leather cap, laced with silver, when actually required ; a blue jacket with silver lace, a blue waistcoat with sleeves, and a pair of blue plush breeches, once in two years. Each corporal has for clothing, a plain leather cap, when actually required ; a blue jacket, silver lace on cuff and collar ; a blue waistcoat with sleeves, and a pair of blue plush breeches once in two years. Each private has for clothing, a plain leather cap, when actually required ; a plain blue jacket, a blue waistcoat with sleeves, and a pair of blue plush breeches, once in two years.

Infantry. In a regiment of *Foot Guards*, each serjeant has for clothing, a coat, the sleeves unlined ; a waistcoat with sleeves, a pair of breeches, made of materials of the same quality as the coat, and lined, a pair of military shoes, a pair of gaiters, and a pair of doe-skin gloves, annually. A lackered felt cap, with a cockade and tuft, once in two years. Each corporal, drummer, and private, has for clothing, a coat, the sleeves unlined, a waistcoat with sleeves of milled serge, a pair of breeches, made of materials of the same quality as the coat, a pair of military shoes, a pair of gaiters, and a pair of mitts, annually. A cap, as above, once in every two years.

In a regiment of *Infantry of the Line* serving in Europe, North America, or New South Wales (Highland corps excepted) each

serjeant shall have for clothing, a coat, the sleeves unlined, a pair of breeches, made of materials of the same quality as the coat, a cloth waistcoat, lined, with sleeves of milled serge, and a pair of military shoes, annually. A cap, as above, once in two years. Each corporal, drummer, and private, has a coat, the sleeves unlined, a pair of breeches, of materials like the coat, a kersey waistcoat, with serge sleeves, and a pair of military shoes, annually; a cap once in two years.

In a Highland corps on the above stations, each serjeant has a jacket, the sleeves unlined, a cloth waistcoat, with serge sleeves, and a pair of military shoes annually. Each corporal, drummer, and private, a jacket, the sleeves unlined; a kersey waistcoat, with serge sleeves, and a pair of military shoes annually. The colonel is to be at the charge of Highland appointments, viz. bonnet, feathers, plaid, and purse.

In a regiment of *Infantry serving in the West Indies* (except the 5th battalion of the 60th regiment, and the regiments composed of people of colour), each serjeant has a coat, partly lined; a serge waistcoat with sleeves; two pair of Russia linen trowsers; a pair of flannel drawers, and a pair of military shoes, annually; and a cap once in two years. Each corporal, drummer, and private, has a coat, partly lined; a serge waistcoat, with sleeves, cuffs and collar, the colour of the facing; a pair of Russia linen trowsers; a pair of military shoes, and a foraging cap, annually; and a cap once in two years. In the fifth battalion of the 60th regiment, and the 95th regiment of foot (rifle corps), each serjeant has a jacket, the sleeves unlined; a waistcoat, with serge sleeves; a pair of pantaloons, and a pair of military shoes, annually; and a cap once in two years. Each corporal, drummer, and private, has a jacket lined, but not laced, the sleeves unlined; a kersey waistcoat, with serge sleeves; a pair of blue pantaloons, made of such cloth as the jacket, and a pair of military shoes, annually; and a cap once in two years. The men are to pay the extraordinary charge of 2s. 3d. on this clothing, in consequence of receiving pantaloons instead of breeches.

In the *regiments composed of people of colour*, serving in the West Indies, each serjeant has for clothing, a jacket, the sleeves unlined; a serge waistcoat, with sleeves; two pair of Russia linen trowsers, and a pair of military shoes, annually; and a cap, and a grey coat, distinguished from those of the privates by cuffs, collar, and buttons (conformable to the facings, &c. of the regiment), once in two years. Serjeants, being Europeans, have also one pair of flannel drawers annually. Each corporal, drummer, and private, has a round jacket, partly lined; two pair of Russia linen trowsers, and a pair of military shoes, annually; and a cap, and a grey great coat, once in two years.

In

In a regiment of *Infantry serving in the East Indies*, each serjeant has a coat, partly lined, and two pair of military shoes, annually. A cap, once in two years. In lieu of other articles, clothing adapted to the climate is to be supplied at the discretion of the commanding officer, to the amount of 18s. 8d. per annum, which becomes an annual charge against the colonel. Each corporal, drummer, and private, has a coat, partly lined, and two pair of military shoes, annually; and a cap once in two years. In lieu of other articles, clothing adapted to the climate is supplied, at the discretion of the commanding officer, to the amount of 6s. 7½d. per annum, which becomes an annual charge against the colonel.

In the *Staff Corps*, each serjeant, corporal, drummer, and private, has a coat, waistcoat, pair of blue cloth pantaloons, and a pair of half boots, annually; and a cap once in two years. And further, in consideration of the laborious nature of their service, each serjeant, corporal, drummer, and private, has a Russia duck waistcoat, with sleeves, and a pair of Russia duck pantaloons, annually. And to these a great coat once in three years is added.

For clothing regiments on *foreign stations*, materials are not furnished; but the things required are sent out made up; except in instances where a special dispensation is granted by the king, through the commander in chief, or secretary at war.

With respect to the receipt of *clothing at stated times and broken periods and compensations* in certain cases, the following are the rules. Non-commissioned officers and soldiers, dying, or discharged before the completion of the period for which the clothing is assigned to last, reckoned from the usual day of delivering the same, have no demand whatever on account thereof. If a serjeant is reduced to the ranks, his clothing is to be received for the use of his successor, and he will receive private clothing equally worn. A recruit who comes into the regiment after the proper time for the delivery of clothing (if not raised for an augmentation, in which case he is to be furnished with new clothing complete) shall be immediately intitled to clothing as good as that in wear by the rest of the regiment: and he shall be entitled to new clothing at the next period of general delivery to the regiment. It is the duty of the colonels, and of those employed by them, to take especial care that the clothing be forwarded and delivered to their respective corps at the exact period when it is due; and few cases ought to arise, in which it should become a question whether an allowance in money might not be substituted by the colonels in lieu of delivering in kind the articles which by the regulations they are required to furnish: but if from any extraordinary circumstances of the service, such an instance should be supposed to have occurred in any regi-

ment or detachment serving abroad, the grounds on which a commutation in money is proposed, shall be fully stated to the commander in chief, or if there is none, to our secretary at war, in order that his majesty's pleasure may be previously known. If the king approves the measure, the following sums, being the estimated amount of what the colonels would have paid to their clothiers, after a reasonable deduction for incidental charges to which they are liable, is to be given to the men.

*In the Dragoon Guards and
Dragoons.*

In the Infantry.

	£. s. d.		£. s. d.
To each serjeant, in lieu of clothing complete -	6 4 0	To each serjeant, in lieu of clothing complete -	3 12 0
To each corporal, trumpeter, and private, ditto -	3 9 0	To each corporal, drummer, and private, ditto -	1 16 6

The date from which the annual, biennial, and other rights to clothing are to be computed, is fixed on the 25th December, 1803.

NECESSARIES AND APPOINTMENTS. For necessaries a stoppage is made in the pay of cavalry of 2s. 7½d.; and of infantry 1s. 6d. per week. Exclusive of clothing and necessaries, the cavalry have certain articles, denominated appointments. These are described as follows :

To the *Dragoon Guards and Heavy Dragoons*; boots, and cloaks with sleeves. *Sadlery.* Saddle with pannel and pad in one; a web girth, with six roller buckles; pair of strap flaps; martingale, breast-plate, with roller buckles, leather surcingles, with roller buckles; pair of stirrup leathers, with roller buckles; pair of stirrup irons; bit and bridoon complete, with head reins and nose band; pair of double and single forage straps; pair of cloak straps and single ditto; pair of holster and a fire-lock strap with roller buckle; holster and shoecase; carbine bucket with picket ring; carbine bucket strap; cover for holsters; leather cloak cover; horse collar with iron chain. *Buff accoutrements.* Pouch curved for thirty rounds; pocket behind ditto, and roller buckles; carbine belt, three inches wide, and buckles with two brass tongues and tip; pair of straps for the pouch to hang by; brass slider and swivel; sword waist belt, 2½ inches wide; brass plate and slide with a bar and double tongue; bayonet frog of buff leather, and leather sword knot.

To the *Light Dragoons.* Cloak with sleeves, and boots. *Sadlery.* Saddle complete as for the above. *Buff accoutrements.* Pouch curved for thirty rounds, pocket behind ditto, and roller buckles;

buckles ; carbine belt, $2\frac{1}{2}$ inches wide ; buckles with two brass tongues and tips ; pair of straps for the pouch to hang by, brass slider and swivel ; sword waist belt, $1\frac{1}{2}$ inch wide ; sword carriage ; bayonet frog, of buff leather, and leather sword knot.

To the *Royal Waggon Train*. Cloak, and boots, &c.

The duration of these appointments is thus limited : Saddles, holster pipes, buckets, stirrup leathers and irons, 16 years ; bits and cloaks twelve years ; headstalls, reins, breast plates, cruppers, girths, surcingles, straps and boots, six years, and buff accoutrements twenty years.

Articles of Necessaries paid for by the Cavalry. An extra pair of breeches of the same quality, to be in wear with those furnished by the colonel ; a stable jacket, trowlers and foraging cap ; a nose bag, watering bridle, and log ; three shirts, a night cap and black stock ; three pair of worsted stockings : one pair of long black gaiters ; two pair of shoes, combs, razors, &c. ; one clothes and three shoe brushes ; mane comb, sponge, curry comb and brush, worm and picker ; horse picker and scissars ; emery, oil, pipe clay, whiting, and blacking ; button stick, hook, carbine lock case, and a pair of fiddle bags ; the actual expenditure for horse cloths, and surcingles, not exceeding 1s. 8d. per annum for each man, is defrayed by the public.

Articles of Necessaries paid for by the Infantry. One pair of shoes, and three shirts ; one pair of long gaiters, three pair of socks, and mitts during the winter ; one black stock, foraging cap, and knapsack ; one clothes and three shoe brushes ; black-ball, hair ribbon, combs and straps for carrying the great coat ; a yearly allowance of 2s. 9d. is made for effectives each, in regiments at home, for the supply of turncrew, brush, worm, oil, emery and dust. For Highland and other regiments wearing peculiar clothing, peculiar regulations are made.

OFF RECKONINGS. Out of the off reckonings (6d. per day from each serjeant, 4d. from each corporal, and 2d. from each private) allowed to colonels, the clothing, accoutrements, &c. are furnished : it also affords poundage to the pay-office of 1s., one day's pay from the whole regiment to Chelsea hospital, and 2d. in the pound for the agent. — The remainder is nett off reckonings.

ALLOWANCES. When the army is ordered to take the field, an allowance, for the first year only, is issued to the officers, under the following denominations :

Officers.	Baggage.	Forage.	Total.
	£. s. d.	£. s. d.	£. s. d.
Colonel - -	7 10 0	28 15 0	36 5 0
Lieutenant-colonel	7 10 0	22 10 0	30 0 0
Major - -	7 10 0	17 10 0	25 0 0
			Captain

Officers.	Baggage.	Forage.	Total.
	£. s. d.	£. s. d.	£. s. d.
Captain -	} 7 10 0	12 10 0	20 0 0
Pay-master -			
Surgeon -			
Adjutant -	} 7 10 0	0 0	12 10 0
Lieutenant -			
Ensign -			
Quarter-master			
Assistant-surgeon			

Field officers and captains are allowed each, for a horse, 18*l.* 18*s.* The same allowance is made to every two subalterns and staff.

Regiments of cavalry taking the field have none of the above allowances made them, except the field officers and captains; they have an allowance of 18*l.* 18*s.* to purchase a horse, and the subaltern and staff the same between every two.

Each regiment is also allowed six horses, at 18*l.* 18*s.* each, for the following purposes: For the carriage of ammunition, two; for camp kettles, two; for intrenching tools, one; for the medicine chest, one. Officers, in camp, are allowed a certain proportion of forage, out of the first year's allowance, to provide themselves with marquees and tents; the field officers and captains have each a separate one: the subalterns have a tent between two. In militia regiments, the paymasters and assistant surgeons have captain's allowances made them, provided they hold, with their staff appointment, subaltern commissions. Officers returning from India to Europe, on leave of absence, are accommodated with their passage on board the Company's ships, for which an allowance is made to the commanders, for each colonel, 150*l.*; lieutenant-colonel, 120*l.*; major, captain, 100*l.*; subaltern, staff, &c. 80*l.* The bills for passage are signed by the commanding officers of regiments, also by the commander in chief, or, under his order, by the quarter-master-general.

Officers sent home on the recruiting service are allowed each, from North America, West Indies, or Africa, 12*l.* 10*s.* Gibraltar, &c. 5*l.* 5*s.* According to circumstances this allowance is sometimes increased.

Officers and privates sent on the recruiting service, have an allowance for passage, each, to and from

	Officers.	Privates.
	£. s. d.	£. s. d.
Port Patrick to Donaghadee	0 10 6	0 5 0
Liverpool to Belfast, or Dublin	1 11 6	0 5 0
		Holyhead

		Officers.			Privates.		
		£.	s.	d.	£.	s.	d.
Holyhead to Dublin		1	11	6	0	5	0
Bristol to	{ Dublin } Belfast }	2	2	0	0	6	6
	Cork	1	11	6		5	0
	{ Waterford } Limerick }	2	2	0	0	10	6
		1	11	6	0	5	0
Milford Haven to Waterford		1	11	6	0	5	0
Isle of Wight to	{ Cork } Waterford }	2	2	0	0	10	6
	Limerick	-	3	3	0	10	6

A further allowance of *9d.* per mile is made to officers going to or returning from their stations, for the land carriage of their baggage; these extras come into the accounts of the paymaster of the district in which the officer is stationed.

*Contingent Allowances to Captains of Troops and Companies.
Cavalry.*

No. of men in a troop.		Non-effect. per ann.	Contin. per ann.	Riding houses.	Total per ann.
		£.	£.	£. s.	£. s.
When	{ 40	20	10	18 1	48 1
less	{ 50	20	10	23 6	53 6
than	{ 60	20	20	23 6	63 6
	{ 70	20	20	23 6	63 6
70 and upward.		20	30	23 6	73 6

The colonel is allowed *2s. 8d.* per day for each troop.

Infantry.

No. of men in a company.	Non-effect. per ann.	Contingencies.		Total per ann.
		Men at <i>6d.</i> per day.	Amount per ann.	
	£.		£. s. d.	£. s. d.
Under 50	20	Two -	18 5 0	38 5 0
Under 76	20	Three -	27 7 6	47 7 6
And upwards	20	Four -	36 10 0	56 10 0

The colonel is allowed *6d.* per day for each company; the contingencies are given to the subaltern who pays them.

The non-effective money is still continued to the field-officers, who

who have lost their troops or companies by the late regulation.

There is a yearly allowance of 2s. 9d. to each soldier, under the head of ordnance money, for keeping his arms bright : also 2s. 6d. for altering each man's clothing ; but these do not extend to regiments on foreign stations.

Officers, non-commissioned officers, and privates employed in the public works, have the following allowances : subalterns, in addition to their daily pay, 4s. ; non-commissioned officers, as overseers, ditto, 4s. ; ditto, or privates as artificers, 1s. 8d. ; ditto, in winter, 1s. 4d. Privates as labourers, 10d. ; ditto, in winter, 8d.

Allowances of Rations to every Six Soldiers on board Transports, &c. equal to the Quantity issued to Four Seamen.

		lb weight of biscuit.	Pints of pease.	lb weight of pork.	ozs. of butter.	ozs. of cheese.	Pints of meal.	lb weight of beef.	lb weight of flour.	ozs. of plums.	Pints of spirits.
Sunday	-	4	2	4	0	0	0	0	0	0	2
Monday	-	4	0	0	6	9	2	0	0	0	2
Tuesday	-	4	0	0	0	0	0	4	3	8	2
Wednesday	-	4	2	0	6	9	2	0	0	0	2
Thursday	-	4	2	4	0	0	0	0	0	0	2
Friday	-	4	2	0	6	9	2	0	0	0	2
Saturday	-	4	0	0	0	0	0	4	3	8	2

Allowances in Stationary Quarters. Each soldier, in barrack or quarter, is allowed to make use of 1lb. of bread, and three quarters of a pound of meat per day. When the price of meat exceeds 6d. per pound, and bread 1½d. such excess beyond the stated prices is defrayed at the public expence.

Allowances on a March. Soldiers on a march are allowed 11d. per day, each, in addition to his pay. Of this consolidated sum 1s. 4d. goes to the innkeepers on whom they are billeted. Innkeepers furnish soldiers billeted on them, as stationary, with candles, vinegar, salt, pepper, and mustard, for which they receive ½d. per day from each ; and for each horse belonging to officers billeted on them, 1s. 2d. per night for hay and straw.

Men permitted to find their own lodgings, have each, in lieu of beer, 2d. per day allowed them, if in billet, 1½d. a halfpenny

* When spirits are not used, double that quantity of wine is issued in its place. Vinegar is issued as occasion and the preservation of health require it.

of which goes to the landlord, for the articles stated above : and if in barrack, 1d. per day.

Allowances to Waggoners for the carriage of baggage, &c. For a waggon with five horses, 1s. per mile ; ditto with four horses, or 15 cwt. 9d. per mile : less than four horses, or under 15 cwt. 6d. per mile.

Additional rates may, if reason should demand it, be fixed by magistrates, at the general sessions, not exceeding 4d. 3d. 2d. in proportion to the first.

Allowances to men for life, who become blind or wounded in service. Serjeants, 1s. 6d. ; corporals, 1s. 2d. ; and privates, 1s. per day. When a wound occasions the loss of an eye or a limb to an officer, he is, by his majesty's warrant, entitled to a gratuity in money equal to one year's pay of the rank he holds ; further, he is allowed the expence attending his cure, if not performed at the public charge. The *widow and orphans* of an officer killed in action, are allowed according to his regimental rank, viz. The widow, one year's pay ; each child under age, or not married, one third of what is allowed to the widow. All persons dying of their wounds within six months, are deemed slain in battle. Officers commanding regiments are to certify the time, place, and event : a duplicate of which is to be sent with the monthly return.

Allowances to discharged Men not recommended.

In England	{ to any part of ———	14	} days pay.
	{ to any part of Scotland	21	
	{ to any part of Ireland	28	

Regulations relative to the Commissary Department in Home Encampments.

BREAD. Each soldier is to receive as his allowance for four days, a loaf, weighing six pounds, made of wheat flour, for which he is to be charged five-pence, to be paid by the regimental paymaster, at every settlement, to the contractor, or to such other person as the commissary-general may appoint. Servants not being soldiers, in the proportion of two per troop or company, and washer-women for each troop or company, in the proportion of one for every twenty men, are permitted to receive bread at the same price, to be paid also by the paymaster. Each soldier is allowed wood or coal at the rate of 3lb. weight per day ; and 27lb. weight of straw for every 32 days : the same is issued at certain periods. The batmen of each troop, or company, are allowed 72lb. and the washer-women 108lb. weight of straw for every sixteen days : issued in like manner. Each troop, or company, is allowed 1080lb. weight of straw for thatching the huts. Soldiers of regiments not

not having paillasses, are allowed one third straw in addition. Hospitals, &c. are supplied with both, as the surgeons deem it necessary. Officers are allowed wood or coal in rations of 3lb. weight each, per day; viz. commander in chief, without limitation; general, 100; lieutenant-general, 70; major, adjutant, quarter-master, barrack-master, and commissary-general, each 50; brigadier general, 40; deputies adjutant, quarter-master, and commissary general, each 12; inspector-general of hospitals, 10; colonel (or officer commanding a regiment) and the officers of each troop or company, 8; assistants, adjutant, quarter-master, commissary-general, majors of brigade, and inspector of hospitals, each, engineer and provost marshal, 6; resident commissary, surgeon, apothecary, purveyor, aid de camp, and field officers, each 4; deputy-purveyor, assistant provost marshal, and hospital mate, 2.

Forage is daily issued in rations of 10lb. weight of oats, 14lb. hay, and 6lb. straw, each, for the effective horses in camp, belonging to officers, not exceeding the following numbers: commander in chief, 30; general 16; lieutenant-general, 12; major-general, 10, brigadier, adjutant, quarter-master, barrack-master generals each, and colonel of cavalry, 8; colonel of infantry, and lieutenant colonel of cavalry, each 7; commissary general, lieutenant colonel of infantry, and major of cavalry, 6; deputies adjutant, quarter-master, and barrack-master generals each, secretary to the commander in chief, and major of infantry, 5; assistants, adjutants, and quarter-master generals, each, deputy commissary, inspector-general of hospitals, aid de camp to the commander in chief, and captains of cavalry, each 4; physician purveyor, aid de camp, major of brigade, assistants commissary and inspector of hospitals each, captains and adjutants of infantry, and subalterns of cavalry, each 3; provost marshal, surgeon, apothecary, deputy purveyor, pay-master, adjutant of infantry, and sutlers, 2; assistant provost marshal and surgeons, each, quarter-masters of horse and foot, veterinary, and surgeons of both, 1. Rations of straw issued to cavalry and artillery horses are but 4 lb. weight each.

Returns are to be transmitted to the resident commissary, signed by each officer, on the day preceding the morning of delivery. Officers having brevet rank, draw forage according to their regimental rank; and those having two commissions draw but for one. The field officers and captains of cavalry pay sixpence per ration for the forage. The pay-master pays 8½d. for the troop horses: all other officers receive theirs without payment. After four deliveries of bread, wood, and forage, and one of straw, making a period of sixteen days, a settlement is made by the pay-master, and bills on the agents, given to the contractors, in the presence of the resident commissary. The settlement for the general and staff officers is to take place

at each period of thirty-two days. The aid de camps sign receipts for the latter; a commissioned officer of cavalry, and quarter-master of infantry for the former; and physicians or surgeons for the general or regimental hospitals.

By another regulation officers commanding districts have the following yearly allowance of forage for taking the field.

			Number of Rations for 200 days.			Amount at 6d. per Ration.
General	-	-	40	-	-	£ 200
Lieutenant general	-	-	30	-	-	150
Major general	-	-	24	-	-	120
Brigadier general	-	-	20	-	-	100
Aid-de-camp, &c.	-	-	4	-	-	20

From the above, a deduction of one shilling in the pound is made at the war office, and sixpence at the pay office. In general, the forage allowances to officers on foreign stations, wherein they differ materially, are greater than those at home; they are regulated by the commanders in chief there, and issued by their warrants accordingly.

Indemnifications for Losses sustained by Officers on Service.

Infantry.

		Baggage.		Camp Equipage.		Horses.
		£.		£. s.		£. s.
Colonel	-	120	-	80 0	-	31 10
Field Officer	-	100	-	60 0	-	31 10
Captain	-	80	-	35 0	-	18 18
Sub. staff	-	60	-	17 10	-	18 18
Adjutant	-	60	-	17 10	-	31 10

* Horses ordered to be shot for the glanders, killed, or taken by the enemy, come under the head of losses. Should a part only of baggage be lost, it is estimated at $\frac{1}{2}$, $\frac{1}{3}$, or $\frac{1}{4}$, without entering into the particulars, according to which they receive in proportion, upon certificates stating the circumstances and causes, signed by themselves, and authenticated by the officers commanding their regiments.

Cavalry.

		Baggage.		Camp Equipage.		Horses.
		£. s. d.		£. s. d.		£. s. d.
Colonel	-	140 0 0		90 0 0		31 10 0
Field officer	-	120 0 0		90 0 0		31 10 0
Captain	-	90 0 0		45 0 0		31 10 0
Sub.	-	70 0 0		45 0 0		31 10 0

Quarter-

	Baggage.			Camp Equipage.			Horses.		
	£.	s.	d.	£.	s.	d.	£.	s.	d.
Quarter-master	40	0	0	00	0	0	29	8	0
Staff officers whose situations require their keeping } good horses	-	-	-	-	-	-	31	10	
General officer's first charger				-	-		47	5	0
Ditto - second ditto				-	-		31	10	0
Heavy dragoon's first charger				-	-		47	0	0
Light dragoon's first ditto				-	-	-	36	15	0
Batt-horses both for cavalry and infantry							18	18	0

Claims, as preferred in these cases, are to be submitted to the consideration of the general officers commanding in chief on foreign stations, who are authorized to order payments accordingly.

Indemnification for Loss of Necessaries, &c. sustained by Non-commissioned Officers and Privates on Service.

	Cavalry.			Infantry.		
	£.	s.	d.	£.	s.	d.
Serjeant - - - - -	2	15	0	2	10	0
Corporal, trumpeter, private - -	2	10	0	2	2	0
A servant, not being a soldier in either } cavalry or infantry - - -	3	8	0	0	0	0

Certificates of the above to be signed by the captains of troops or companies, also by the officers commanding regiments.

Officers embarking with their regiments for foreign service, or ordered out with recruits, are allowed each; lieutenant colonel, 30*l.*; major, 25*l.* captain, subaltern, and staff, 20*l.*

PRIZE MONEY. In 1803 a board of general officers was convened for the purpose of regulating the future distribution of prize money; who, having agreed, submitted the following plan for his majesty's consideration, which being approved of, is now the standing regulation.

In all captures, made in conjunct expeditions, the navy and army to share equally, according to their corresponding ranks.

The total amount, being separately received by the agents respectively appointed by each, to be divided similarly to the present mode practised in the navy, according to the following proportions.

	Shares.
Private, drummer, driver, artificer, servant, each	1
Corporal, bombadier, and foreman of artificers, each	1½
Serjeant, conductor of stores, and master artificer, ditto	5
Staff serjeant - - - - -	8
	Quarter-

THE ARMY.

	Shares.
Quarter-master of dragoons - - - -	12
2d lieutenant, cornet, ensign, surgeon, hospital mate, clerk of the stores, and of works, overseers and draughtsmen, each - - - -	
Lieutenant, baggage and waggon masters, provost marshal, deputy purveyor, assistant adjutants, quarter master, commissaries and paymasters general, and draughtsmen, each - - - -	20
Captain, paymaster, surgeon, major of brigade, aid-de-camp, judge advocate, physician, purveyor, field inspector, apothecary, commissaries, surveyor, and draughtsmen, each, and secretary to the commander in chief - - - -	50
Major, inspector of hospitals, (not at the head of the department,) deputy commissaries, and deputies, adjutant, and quarter master, inspectors, and assistant inspector general, each - - - -	80
Lieutenant-colonel, deputy paymaster-general, deputies, adjutant, quarter-master, and commissary general (at the head of the departments,) and director, superintendant, and inspector general (not at the head of the departments), each - - - -	100
Colonel, adjutant, quarter-master, and director general, and superintendant and inspector general at the head of the department, each - - - -	150
Brigadier generals, and commissary general, in an army commanded by a major general, each - - - -	300
Major-generals, and commissary general - - - -	450
Lieutenant-generals, each - - - -	800
Generals, each - - - -	1200
Field-marshal - - - -	2000

The officer in command may have for his choice one sixteenth of the whole prize, or the number of shares of the rank above that which he holds in the army. Officers having brevet rank share according to it; and those having two commissions receive but for one. Only those who were present at the attack, or having formed a part of the army at the time, have claim: but those who have remained behind, or been sent another way; though formerly forming a part of the army, are excluded. The board also recommended the appointment of prize agents, to be under the direction of the secretary at war.

STAFF. The staff of the British army is composed of the following persons. The commander in chief and his military secretary; secretary at war; deputy ditto; adjutant general; deputy ditto; quarter master general; deputy ditto; barrack-master general; deputy ditto; inspector general; deputy ditto;

ditto; commissary general of musters; deputy ditto; commissary general of stores; deputy ditto; inspector general of army accounts; physician general; surgeon ditto; apothecary ditto; military superintendent and inspector of hospitals; two paymasters general; judge martial and advocate general; veterinary surgeon general.

COMMANDER IN CHIEF'S OFFICE. This office is held at the Horse Guards, Whitehall, for the purpose of receiving information and transacting business relative to the details of military affairs. In it are the commander in chief, a public secretary, a private secretary, with aids-de-camp, assistants and clerks.

WAR OFFICE. This office is also held at Whitehall. Of the rank and duties of the secretary at war, some account has been given in this volume, page 27; his deputy secretary prepares the correspondence, and (under the orders or authority of the secretary at war) directs the whole business of the department, the accountant's branch excepted.

The *first clerk* is responsible for the execution of the detail of the business, and superintends the conduct of all the clerks, messengers, tradesmen, &c.

The *principal clerk* is employed in conducting the current business of the office, under the directions of the first clerk. There are other clerks, who prepare and are responsible for the estimates and establishments of the army; they also transact the business relating to the payment of the staff, garrisons, &c. are employed in the current business of the office, and in particular attendance on the secretary, and deputy secretary at war, enter all commissions of officers, prepare the army lists, and make out the warrants for holding courts martial, receive and pay the charges for subsistence and escort of deserters from British regiments, taken up in Ireland, and from Irish regiments taken up in Great Britain; and transact all the business relative to the pensions of the widows of officers.

In the *Accountant's department* are persons who superintend the examination and settlement of all the accounts of the army, that come under the cognizance of the war-office. This branch is not considered as subject to the directions of the deputy secretary, but only of the secretary at war himself. The principal assists in examining the army accounts, and in proposing the sums to be issued from time to time on account, for various services not borne on the regimental establishment; such as recruiting, extra feed, innkeepers allowances, &c.; he also prepares the beating orders, and copies thereof; and two assistants make out from the muster rolls, abstract statements of the numbers, rank, and pay of the officers and men borne thereon; by

a comparison with which, the corresponding charges in the regimental accounts are to be verified.

ADJUTANT GENERAL'S OFFICE. This office is held in Crown Court, Westminster, but considered a branch of the commander in chief's office. In it are the adjutant general, deputy adjutant general, quarter master general and his assistants.

PAYMASTER GENERAL, and the **BARRACK DEPARTMENT,** have already been described; the former at page 27 of this volume, the latter at page 290.

ARMY AGENTS. The colonels of regiments appoint their own agents. These persons give security to government for the several sums of money intrusted to their care, and act between the paymaster general, secretary at war, and the paymasters of regiments. Agents are subject to the articles of war: should they withhold the pay of officers or soldiers for one month, on proof before a court martial, they are liable to be dismissed from their situation, and to forfeit 100*l.* for every such offence. In the cavalry, agents are allowed one warrant man per day (at 1*s.* 2*d.*) for each troop; and in the infantry one (at 6*d.*) for each company. They are also allowed 2*d.* in the pound on the full pay of regiments. According to the strength established by the war office, the allowances to agents are, for paying a regiment of cavalry, 433*l.* 13*s.* per annum, and for paying a regiment of infantry, 270*l.* 1*s.* 6*d.*

GARRISONS. Some forts and fortresses are necessarily maintained in various parts of the British dominions, for protection, and in these, garrisons are placed in the proper and genuine sense of the word; but in military colleges and hospitals, and in some towns where garrison duty is necessarily performed, the government is in the hands of military officers, and they are also in general denominated garrisons. Those in the united kingdom, of both species, are included in the following list, some being under the command of governors with subordinate officers, others of town majors: Alderney, Belfast, Berwick, Blackness Castle, Calshot, Carlisle, Carrickfergus, Charlemont, Chelsea Hospital, Chester, Cinque Ports, Cork, Dartmouth, Dunbarton, Dublin, Duncannon Fort, Edinburgh, Galway, Gravesend and Tilbury, Guernsey, Hull, Hurst Castle, Jersey, near Inverness, Kinsale, Landguard, Limerick, Londonderry and Culmore, Londonderry, St. Mawes, Royal Military College, Royal Military Asylum, Pendennis Castle, Plymouth, Portland Castle, Portsmouth, Ross Castle, Scarborough Castle, Scilly Island, Sheerness, South Sea Castle, Stirling Castle, Tynmouth and Cliff Fort, Tower of London, Upnor Castle, the Isle of Wight, Fort William, Windsor, and North Yarmouth.

Among the garrisons above mentioned, the Military College, Chelsea

Chelsea Hospital, and the Military Asylum, will be noticed in a subsequent page ; and the Tower of London, in treating of the metropolis.

MILITIA. Of the origin and use of this portion of the military force some account has already been given ; the following are the details respecting it, drawn from the statute 42 Geo. III. c. 90, and some subsequent regulating acts ; but it is to be observed, they do not apply to the city of London, the Tower Hamlets, the Stannaries or the Cinque Ports.

LORD LIEUTENANTS OF COUNTIES. These officers are appointed by the king, and are intrusted by parliament with full power and authority to call together, arm, and array the militia, and cause them to be trained and exercised once in every year. They may appoint twenty or more persons duly qualified, and living within their respective counties, ridings, and places, to be their deputy lieutenants ; and may also appoint a proper number of colonels, lieutenant colonels, majors, and other officers duly qualified, to train, discipline, and command the militia. But the names of the deputy lieutenants, and persons for whom commissions are intended, are to be laid before the king, and if he expresses disapprobation within fourteen days, the commissions are not to issue. And if the lieutenant is out of the kingdom or the situation vacant, the king may empower three deputy lieutenants to nominate officers, who, when appointed, rank with the officers of the regular forces as youngest of their rank.

QUALIFICATIONS. *Deputy Lieutenant* must have 200*l.* a year in land, freehold, copyhold, or customary, or in estates for long terms of years determinable on one or more life or lives, held in his own right, or in right of his wife ; or he must be heir apparent to some person possessed in like manner of 400*l.* a year. *Colonel*, 1000*l.* a year, or heir apparent to 2000*l.* *Lieutenant-colonel*, 600*l.* a year, or heir apparent to 1200*l.* *Major*, 400*l.* or heir apparent to 800*l.* *Captain*, 200*l.* or heir apparent to 400*l.* or younger son of a person who is, or at the time of his death was, possessed of 600*l.* a year. *Lieutenant*, a similar estate of 50*l.* per annum, or 1000*l.* in personal estate, or in real and personal together 2000*l.* or son of a person who is, or who died possessed of an estate of 100*l.* per year, or of personal property in value 2000*l.* or real and personal together 3000*l.* *Ensign*, 20*l.* a year, or in personal estate 500*l.* or in real and personal together, 1000*l.* or son of a person who has, or had, 50*l.* a year, 1000*l.* in personal ; or in real and personal together 1500*l.* one moiety of the qualifications to be situate within the county or place for which the commission is granted : reversions to be estimated at one third of their actual produce ; that is, an estate of 300*l.* a year in reversion, to be esteemed equal to one in possession of 100*l.* and so in proportion ; and beneficial leaseholds

holds where the original term exceeded twenty years, to be considered as full qualifications to the extent of their annual value.

In the counties of *Cumberland, Huntingdon, Monmouth, Westmoreland, and Rutland*, and in every county and place in *Wales*, the estates requisite for the qualification of the deputy lieutenants and officers are smaller. For a *deputy lieutenant* 150*l.* a year, or heir apparent to 300*l.* *Colonel*, 600*l.* or heir apparent to 1200*l.* *Lieutenant-colonel* or *major commandant*, 400*l.* or heir apparent to 800*l.* *Major*, 200*l.* or heir apparent, 400*l.* *Captain*, 150*l.* or son of a person who has or had at his death 300*l.* *Lieutenant*, 30*l.* a year, or personal estate 600*l.* or or real and personal together 1200*l.* or son of a person who is, or died, worth 60*l.* a year, or with a personal estate of 1200*l.* or real and personal 2400*l.* *Ensign*, 20*l.* a year, or personal estate in value 300*l.* or real and personal together 600*l.*; or son of a person who is, or died, worth 30*l.* a year, or in personal estate 600*l.* or real and personal mixed 1200*l.*

In the *Isle of Ely* the qualifications are nearly similar, but in some respects rather lower, a *Captain* being required to possess no greater estate than 100*l.* a year, or to be heir apparent to double that sum, or younger son of one a proprietor of 300*l.* per annum. In the lieutenant and ensign there is no difference from those in the last mentioned counties.

In cities or towns which are counties within themselves, and have been used to raise and train a separate militia within their liberties; the lieutenant of every such city or town, or where there is none appointed, the chief magistrate nominates the deputy lieutenants and officers of militia, whose number and rank must be proportionable to the number of militia-men which such city or town is to raise as their quota; and all powers and provisions made with respect to counties at large take place in them. The qualification for a *deputy lieutenant* is 150*l.* a year as aforesaid, or a personal estate alone, or real and personal estate together, to the amount or value of 3000*l.* *Field officer*, 300*l.*; or personal estate alone, or real and personal together, to the value of 5000*l.* *Captain*, 150*l.* a year; or personal estate alone, or real and personal together, to the value of 2500*l.* *Lieutenant*, 30*l.* a year, or personal estate of 750*l.* *Ensign* 20*l.* a year, or personal estate of 400*l.* One half of the real estates (except those for lieutenants and ensigns), must be within such city or town, or within the county to which it is united.

No person can be admitted a deputy lieutenant, or to any rank in a regiment of militia higher than that of *lieutenant*, until he delivers to the clerk of the peace or his deputy, a specific description in writing, signed by himself, of his qualification;

tion ; stating the parish in which it is situate ; of which the clerk of the peace transmits to the lord lieutenant a copy ; and no commission for a higher rank than that of lieutenant is valid, unless it be declared in it that such officer has delivered in his qualification as directed. The clerk of the peace is also to enter the qualifications on a roll, to publish the commissions granted, and in whose room, in the London Gazette, and, every January, transmit to the secretary of state a complete account of qualifications left with him, to be laid before parliament ; and the officers must, within six months at some general or quarter session, or in one of the courts of record at Westminster, take the oaths appointed by law. Every deputy lieutenant and officer down to major, acting without having delivered in his qualification, to forfeit 200*l.* and every captain 100*l.* half to the informer, and the proof of qualification to rest on the party sued ; but the necessity of delivering in a qualification does not rest on peers or their heirs apparent, whether they be lords lieutenant, or commissioned officers.

NUMBER. The number of private men to be raised (exclusive of the places excepted) is as follows :

For the county of Bedford	-	-	-	-	317
Berks	-	-	-	-	561
Bucks	-	-	-	-	599
Cambridge	-	-	-	-	481
Chester; with the city and county of the city of Chester	-	-	-	-	885
Cornwall	-	-	-	-	647
Cumberland	-	-	-	-	615
Derby	-	-	-	-	939
Devon, with the city and county of the city of Exeter	-	-	-	-	1512
Dorset, with the town and county of the town of Poole	-	-	-	-	411
Durham	-	-	-	-	492
Essex	-	-	-	-	1244
Gloucester, with the city and county of Gloucester, and the city and county of Bristol	-	-	-	-	1163
Hereford.	-	-	-	-	520
Hertford	-	-	-	-	480
Huntingdon	-	-	-	-	159
Kent, with the city and county of the city of Canterbury	-	-	-	-	1296
Lancaster	-	-	-	-	2439
Leicester	-	-	-	-	643
Lincoln, with the city and county of the city of Lincoln	-	-	-	-	1368
Middlesex (exclusive of the Tower Hamlets)	-	-	-	-	3038
Monmouth	-	-	-	-	280
Norfolk, with the city and county of the city of Norwich	-	-	-	-	1209
Northampton	-	-	-	-	724
Northum-					

Northumberland, with the town and county of the town of Newcastle, and town of Berwick	549
Nottingham, with the town and county of the town of Nottingham	564
Oxford	603
Rutland	83
Salop	991
Somerset	1556
Southampton, with the town and county of the town of Southampton	850
Stafford, with the city and county of the city of Litchfield	1133
Suffolk	1042
Surry	1336
Suffex	803
Warwick, with the city and county of the city of Coventry	853
Westmoreland	243
Worcester, with the city and county of the city of Worcester	616
Wilts	917
York, West Riding, with the city and county of the city of York	2429
—, North Riding	911
—, East Riding, with the town and county of Kingston upon Hull	564
Anglesea	128
Brecknock	204
Cardigan	244
Caermarthen, with the county borough of Caermarthen	405
Caernarvon	128
Denbigh	344
Flint	201
Glamorgan	403
Merioneth	121
Montgomery	279
Pembroke, with town and county of the town of Haverford West	201
Radnor	140

Total 39,572

This quota was to remain in force till the 25th of June 1805, and at that time, and afterward, at the expiration of every period of ten years, the privy council is empowered to fix and settle such quotas as they shall think fit, but as nearly as possible in the same proportion, sending the amount of each quota to the lord lieutenant whom it shall concern, and publishing the whole in the London Gazette. If the number thus required

shall exceed that before provided, the lord lieutenant, with three or more deputy lieutenants, at a general meeting to be holden for that purpose, must appoint what number of militia-men shall serve for each respective hundred, rape, lathe, wapentake, or other division within such county or place; and such additional men are to be provided or chosen in the same manner as other militia-men. If the number required is less than that which is established, the general meeting may dismiss the supernumeraries by ballot; but every one of them must appear and serve again if his presence is rendered necessary by vacancies in the regiment or any other cause.

SUPPLEMENTARY MILITIA. In case of invasion, or of imminent danger, and also in case of rebellion, the king may (the occasion being first communicated to parliament if sitting, or declared in council and notified by proclamation, if there be no parliament sitting) by his proclamation, order and direct an additional number of militia men, not exceeding one-half of the aggregate number of the ordinary militia, to be raised and enrolled. The form of apportioning them, and their duties when embodied, are exactly the same as those of other militia men, and the ballot is to be taken out of the old lists. If at the time when the supplementary militia is called out the parliament is separated or prorogued for a term which will not expire in fourteen days, the king is to issue a proclamation for assembling them within that time; and if his majesty thinks it expedient to reduce the whole or any part of the supplementary militia, he may do it by proclamation; but the men so disbanded remain liable, in case of vacancy, to serve for the parish or place for which they were originally balloted.

MAKING LISTS AND BALLOTING. The first measure taken to raise the militia, is by a *general meeting of the lieutenancy* of every county, riding, and place, holden in some principal town; to consist of the lieutenant, together with two deputy lieutenants at the least, or on the death or removal, or in the absence of the lieutenant, then of three deputy lieutenants at the least; and one such general meeting is held annually, the last Tuesday before the 10th of October, or earlier if required; and other general meetings may be summoned on giving notice in the London Gazette; and also in any weekly newspaper usually circulated in such county, riding, or place, fourteen days at least before the days appointed for holding them. If the number of deputy lieutenants who attend is not sufficient to proceed to business, any deputy lieutenant present, or the clerk, may adjourn them to any other time and place. At these general meetings, *subdivision meetings* are appointed, consisting of two deputy lieutenants, or one and a magistrate, of which meetings the clerk of the general meetings

ings is to give notice to every deputy lieutenant residing in the subdivision, and also to the commander of the regiment, battalion, or corps of militia, with an account of the days fixed for receiving the lists, and balloting for and enrolling the men; and another list specifying the names, trades, and usual places of abode of all such militia men as are enrolled; and, where there are substitutes, the names, trades, and places of abode of the persons in the room of whom such substitutes were enrolled.

At the general meeting, orders are to be issued to the chief constables, or other officers of the several hundreds, rapes, lathes, wapentakes, or other divisions within their respective counties, ridings, and places, requiring them to issue orders under their hands to all constables, tythingmen, headboroughs, or other officers of every parish, tything, or place within their divisions, to return to the deputy lieutenants within their respective subdivisions, fair and true lists in writing of the names of all the men usually, and at that time, dwelling within their respective parishes, tythings, and places, between the ages of 18 and 45 years. Such constables and other officers are then, within fourteen days after any such returns shall be required, to give or leave notice in writing to or for every occupier of a dwelling-house where any person shall reside, within the limits of the places for which they act, at his or her dwelling house, or where such dwelling house shall be divided into different apartments, and occupied distinctly by several persons, then to or for the occupier of each, to prepare and produce, within fourteen days, a list in writing, to the best of his or her belief, of the Christian and surname of every man resident therein, between the ages of 18 and 45, distinguishing every person claiming to be exempt from serving; and every such notice is to mention the time and place appointed for hearing appeals; and every occupier must make out the list, and sign and deliver it to the constable or other officer under penalty, in case of neglect or falsity, of a sum not exceeding 5*l*. If the officer who ought to demand these lists happens to be a *Quaker*, two justices may appoint a deputy to act for him, and if the householder is of that sect, the officer may make the list for him; but in both cases the religion of the party must be proved by the written attestation of two respectable individuals of his persuasion. The constables and other parish officers are, after they have obtained these returns, to make out and fix on the church doors, or other public place annually, a general list of persons whom they consider liable to serve, with a notice of the latest or only day of appeals. Copies of these lists are then to be returned to the deputy lieutenants, who may, if they think proper, add together any two or more of them as if but one list; the constables whose duties applied to these

these lists are to act conjointly; and in all cases the deputy lieutenants may determine differences between these officers with respect to the limits of their jurisdictions. The act extends to all extra-parochial places, and in them the officers of the circumjacent district are to act. Persons endeavouring by menaces or promises to procure their names to be omitted or erased from a return forfeit 50*l.*, and those who refuse to disclose their names, 10*l.*

The constables, if required, are to attend the subdivision meetings, and if convicted of neglect or partiality, to be committed to the common jail for one month, or fined not exceeding 20*l.*, nor less than 40*s.* They may amend their lists according to facts which may appear, or make out new, in case of any being casually lost or destroyed, and they must verify them on oath. Persons who consider themselves aggrieved may appeal to the subdivision meeting appointed, but the decision of the majority of deputy lieutenants there is final. The clerks of the subdivision meetings are to transmit to the clerk of the general meeting copies of the rolls of persons liable to serve, as signed at the subdivision meeting, and these, properly made out and arranged, are sent to the privy council. Clerks of subdivision meetings neglecting their duty in these particulars forfeit 20*l.*, those of general meetings 100*l.*

From these lists the lord lieutenant, and three deputies, or, on his death or removal, five deputies, at a general meeting, fix or alter the subdivisions in their county, riding, or place, and the allotments in each respective hundred, rape, lath, wapentake, or other division. At a second subdivision meeting the deputy lieutenants appoint the number of men to serve for each parish, tything, and place; in proportion to the number appointed to serve for each hundred, rape, lath, wapentake, or other division; and appoint another meeting to be holden within three weeks. And they issue an order to the chief constable or other officer of the hundreds, or other divisions, requiring them to give notice to the constable or other proper officer of every parish, tything, or place, of the men appointed to serve for such parish or place, and of the time and place of the next subdivision meeting.

The deputy lieutenants, or any two or more of them, in consequence of such appointment, cause the number of men appointed to serve to be chosen by ballot out of the list returned for every parish or place. They also, at the same or subsequent meetings, ballot for men to fill up vacancies which may arise from any of the following causes: mistake or neglect in the constables, the person balloted being infirm in health, or under five feet four inches in height, and not having property to the amount of 100*l.*, death, or discharge, or promotion of
any

any private to the rank of serjeant, corporal, or drummer, the fact being certified by the commanding officer, and the persons ballotted deserting or not appearing within a month.

The persons ballotted for are liable to serve, although they remove from the place where they resided when the list was made. When a parish is situated in two counties, the persons ballotted belong to the militia of that wherein the parish church stands.

Churchwardens and overseers, with the consent of the parish, obtained at a vestry called for the purpose, and of which three days notice must be given, may provide substitutes for the whole number or any portion of it which their parish ought to raise; and if they hire the men at a price not exceeding 6*l.* each, they may make a rate for the purpose of reimbursing themselves. In this case the same appeals may be made as against a poor rate.

For the purpose of swearing and enrolling the men, the deputy lieutenants and justices appoint another meeting to be holden within three weeks in the same subdivision; and they issue an order to the chief constables, to direct the constables or other officers of each parish or place to give notice to every man so chosen to appear at such meeting; which notice must be given to him or left at his place of abode at least seven days before the meeting.

EXEMPTIONS. The following persons are entirely exempt from service in the militia. Peers of the realm, commissioned officers in his majesty's other forces, or in any castle or fort, officers on the half pay of the navy, army, or marines; officers or private men in any other forces, or officers serving or having served four years in the militia; resident members of either of the universities; clergymen, licensed teachers of separate congregations, whose places of meeting are duly registered; constables, and other peace officers; articulated clerks, apprentices, seamen, or seafaring men, persons mustered, trained, or doing duty, or employed in any of his majesty's docks or dock-yards, in the Tower of London, Woolwich Warren, gun-wharfs at Portsmouth, the powder mills, powder magazines, or other storehouses under the direction of the board of ordnance; persons being free of the company of watermen of the river Thames; any poor men having more than one child born in wedlock; persons serving or having found a substitute in the army of reserve; and effective volunteers. And no person having served personally or by substitute can be obliged to serve again until by rotation it comes to his turn; but no person who has served only as a substitute or volunteer in the militia, is by such service exempted from serving again, if chosen by ballot. On these exemptions it is only necessary to observe, that although

an artied clerk is protected, an attorney is not ; and if the deputy lieutenants and justices at any subdivision meeting receive information, or suspect, that any person inserted in any list described as an apprentice, has been fraudulently bound in order to avoid serving, they may inquire into such binding, and summon witnesses, and examine them on oath : and if such fraud appears, they may appoint the person to serve immediately if there be a vacancy ; if not, then on the first vacancy that shall happen : and the person to whom the apprentice was fraudulently bound, forfeits 10*l*.

SWEARING AND ENROLLING. At the meeting appointed for the purpose of swearing and enrolling militia-men, the constables attend and swear to the service of notices, and the individuals chosen by ballot must appear. The parties are examined on oath, as to their families, residence, age, and state of health, to which last they are also corporally examined by skilful surgeons attending for the purpose. The militia man, if approved, takes an oath that he will serve faithfully, and his name is written in a roll provided for the purpose, the term of his service being five years. If the persons ballotted refuse to appear, they incur a penalty of 10*l*. and are liable to serve again at the expiration of five years. Persons refusing to be examined as to their fitness to serve, may be imprisoned a week, and still are liable.

SUBSTITUTES. If any person chosen by lot, shall produce for his substitute, a man of the same county or riding, or of some adjoining county or riding, able and fit for service, who shall have not more than one child born in wedlock, and who shall be examined and approved, such substitute shall be enrolled to serve for five years ; and also for such further time as the militia shall remain embodied, if within the space of five years his majesty shall order such militia to be drawn out and embodied. The substitute undergoes the same examinations, and takes the same oath as the ballotted man ; but he must be at least five feet two inches in height, and not a seaman or seafaring man. If a substitute, after receiving any portion of his money, refuses to appear and be sworn, he must return the money, with a penal addition not exceeding 40*s*. nor less than 20*s*. or be committed for fourteen days to the house of correction. When substitutes are engaged, if the militia is not embodied, two deputy lieutenants or one justice may order the money agreed for to be paid to the substitute ; but if the militia is embodied, a sum not exceeding one half is to be paid to the substitute ; the residue to the clerk of the subdivision meeting, to be by him forwarded to the paymaster or regimental clerk, who will pay it to the substitute on his joining the regiment :

ment: and if the subdivision clerk neglects to remit it for one week, he is to forfeit 20*l.* for every offence.

If a Quaker is ballotted, and refuses to serve or to find a substitute, two deputy lieutenants may provide one on as reasonable terms as possible, and defray the expence by a distress on his effects; but if he shall not have sufficient goods to distrain, and yet be able to pay 10*l.* he is to be committed to the common jail for three months; and if Quakers refuse to pay a parochial rate for finding substitutes, a distress may be levied, and the justices may allow costs.

Servants enrolled in the militia do not vacate their contracts unless embodied, and then are to receive their wages up to the day.

Any high constable, or chief or other constable, or any adjutant, quarter master, or serjeant in the militia, insuring or taking any money for the insurance of, or being in any way concerned in any company, society, partnership, or office for the insurance of persons, for the providing substitutes or volunteers, or for the paying or returning any money for the providing substitutes or volunteers in the militia, for any person ballotted, forfeits 50*l.*

CLASSES. The deputy lieutenants in their several subdivisions, as soon as they shall have enrolled the number of men required, divide them into the following classes, *viz.* in the first class, all the men under thirty years of age, and having no child living; in the second, all the men above thirty, having no child living; in the third, all the men not having any child living under the age of fourteen years; in the fourth class, all the men having only one child under fourteen years; and in the last class, all the men not included in any of the former descriptions. They then make out a list of such classes, and within three days, the clerk of such subdivision must transmit to the clerk of the general meetings a true copy, to be entered in a book kept for the purpose.

REGULARS ENTERING. For preventing the men enrolled in militia regiments from enlisting in other forces, it is enacted, that no recruiting officer shall knowingly receive them; but if by false statements any man procures himself to be received, he is to be committed to jail for six months, then to return to his militia regiment, and after his term of service there is expired, to be passed over to that in which he had so fraudulently entered. If any person serving in the regulars offers himself as a substitute in the militia, he forfeits 10*l.* or is to be imprisoned, not exceeding three months. Any person ordering another to beat up for volunteers to serve in the militia forfeits 20*l.*; and if the serjeant or drummer refuses to declare who gave

gave him his orders, he is to be imprisoned, not exceeding three months.

SEAMEN. And as, at the beginning of a war, it may probably happen that many persons serving in the militia may be seamen, it is provided that if they will agree to enter the royal navy they may be discharged from their regiments, and be delivered over to naval officers; but such change must not be made so precipitately as to diminish the ranks of the regiment in a greater proportion than one in ten. For every man so changing his service, the commanding officer is entitled to demand from the receiver of the land-tax of his county in England, or the receiver general in Scotland, ten guineas, to be applied toward providing a substitute; and when he thus obtains new men, he is to continue discharging all seamen desirous of serving in the navy, and supplying their places by new drafts for money, and new bounties to substitutes. If militia-men happen to be serving in the navy, they are not to be discharged, but their place is to be supplied by substitutes. Militia-men entering into the navy and deserting, or sailors not duly discharged entering into the militia, are to be apprehended and lodged in the common jail, and dealt with as deserters; persons apprehending them are entitled to twenty shillings to be paid on a justice's warrant by the collectors of land-tax within the parish; and persons harbouring them forfeit 10*l.* or on failure of payment, are imprisoned three months.

OF FORMING REGIMENTS AND APPOINTING OFFICERS. The militia of the several counties, ridings, and places, are formed into companies, consisting of not more than 120, nor of less than 60 privates. To each company there are one captain, one lieutenant, and one ensign; and where the number of men raised for any county, riding, or place, is sufficient, the militia is formed into one or more regiments, consisting of not more than twelve, nor of less than eight such companies; and where the number is not sufficient to form a regiment, it is formed into a battalion, consisting of not more than seven nor less than four companies; and where the number is not sufficient to form a battalion, it makes a corps of not less than three companies. The field officers of these regiments, battalions, and corps, must in no case exceed the respective numbers and ranks following; that is to say, in every regiment of not less than 800 privates, one colonel, one lieutenant colonel, and two majors; in every regiment of not less than 480 privates, one lieutenant colonel and one major; and in every corps consisting of three companies, one lieutenant colonel or major, and no other field officer; but no colonel, or field officer in the militia can be a captain of a company. Every battalion of five compa-

nies

nies or upwards may have one company of grenadiers or light infantry, to which two lieutenants are appointed instead of one lieutenant and one ensign; and every such regiment may have one company of grenadiers, and one of light infantry, to each of which companies two lieutenants shall be appointed instead of one lieutenant and one ensign. The King may, if he thinks fit, direct that any proportion of the militia shall be trained and exercised to the service of the artillery attached to any regiment or battalion, and that a supernumerary officer or officers of the regiment or battalion, of such rank as he shall order, and being duly qualified, shall be appointed to and for the men so directed to be trained and exercised. The law also provides for the formation of independent companies, and for the proportion of officers to be appointed where the number of militia is not sufficient to form a regiment: that is, when there are enough to form a battalion of less than 480, but not less than 360 men, the lord lieutenant may appoint a colonel, lieutenant colonel, and major, but with no higher pay than if they were appointed lieutenant colonel, major, and captain respectively. And where the number is sufficient to form three, but not four companies, of 60 privates at the least, he may appoint two persons with the rank of lieutenant colonel and major, but only one of them shall be entitled to any higher pay than that of captain. And where the number is not sufficient to form more than two companies of 60 privates at least, the eldest captain shall serve with the rank of major, but shall only be entitled to the pay of captain.

The king may also, if necessary, augment the number of officers, but the additional field officers must not exceed the following proportions: to a regiment of at least 1000 rank and file, one colonel, two lieutenant colonels, and two majors: to a regiment or battalion of 750 rank and file, one colonel, one lieutenant colonel, and two majors. And no field officer should be added to any corps consisting of less than 750 rank and file, except in temporary cases.

If officers duly qualified as to property cannot be found, his majesty may, after two months from the militia being embodied, appoint officers of the army or marines, whether on full or half pay, to militia regiments, although they may not be qualified; but such officers must have no higher rank than they held in the regulars, nor can the lords lieutenants promote them beyond the rank of captains. Also if persons duly qualified cannot be found within the proper limits to accept commissions, the lord lieutenant, with his majesty's approbation, may ap-
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point others duly qualified from any part of England or Wales. Officers rank according to the date of their commissions.

In certain cases of non-appointment of a commanding officer, the lord lieutenant may lead the militia of his own county or place; or if the commanding officer is absent from England, the next in rank takes the command, until the proper officer notifies his return to the clerk of the peace.

SUBALTERN AND NON COMMISSIONED OFFICERS. The king may appoint a person, who has served in the regulars or in the militia, for at least five years, to be an *adjutant* in each regiment, battalion, or corps. The adjutant, if appointed of the king's other forces, shall, during his service in the militia, preserve his rank in the army; and although not qualified as to property, he may have the rank of captain, but not precede or command any captain in the militia. He must never be absent from the town or place to which his militia regiment belongs without leave, for more than three months in one year, except in case of sickness; and during his absence, the serjeants, corporals, and drummers are to be under the command of the battalion clerk, if a commissioned officer, or of the serjeant major, or some other serjeant appointed for that purpose by the adjutant, with the commanding officer's approbation, or of the senior serjeant, in case the corps has no adjutant or serjeant major.

SECOND ADJUTANT. In all cases where it may be found necessary to appoint a second adjutant, the lord lieutenant may grant him (unless the king disapprove of it) the rank of lieutenant by brevet.

SERJEANTS AND OTHERS. All serjeants, corporals, and drummers must constantly be resident within the city, town, or place, where the arms are kept, and be under the command of the adjutant, or, in his absence, of his substitutes as already mentioned; the adjutant or deputy makes monthly returns of the true state of the serjeants, corporals, and drummers, to the secretary of state, the lieutenant of the county, and the colonel or other commandant of the corps, or in default is subject to punishment by a court martial. No serjeant, corporal, or drummer is to be absent without a regular furlough or licence in writing, signed by his colonel or other commandant; and during such absence they receive the pay following; serjeant, one shilling; corporal, eightpence, and drummer sixpence per day. These officers are appointed in the following proportions, when not in actual service; one serjeant and one corporal to every 20 privates; and when drawn out, an addition is made, so that there is one serjeant and one corporal to every 20 privates; and when not in actual service, there

is one drummer to every company with the addition of one drummer for each flank company of regiments or battalions consisting of five or more companies; and when drawn out into actual service an addition of one drummer to every company. They take the oath of allegiance and of faithful service. Serjeant-majors and drum-majors may also be appointed; but no publican, or dealer in liquors by retail, can be a subaltern officer.

SURGEONS. In corps, not less than two companies of 60 men each, the lord lieutenant may, with the king's approbation, appoint a surgeon, who has obtained a certificate of due examination from Surgeons'-hall, who while the militia is disembodied, receives ten shillings for every day of his actual attendance during exercise, and his fair charge for medicines and necessaries; but when the militia is embodied, he receives pay, and is subject to regulation, like an army surgeon, and he cannot hold any other commission in the militia.

QUARTER MASTER. When a regiment amounts to 360 privates, a quarter master may be in like manner appointed; he must previously have served in the regulars or the militia; ranks, though not qualified, as to property, with lieutenant or ensign, and cannot receive pay in virtue of any other commission in the militia at the same time.

REGIMENTAL CLERK. In regiments consisting of three companies, and not in actual service, the colonel or commandant may appoint a regimental or battalion clerk, who executes the office of paymaster; but where the number of men is not sufficient to form three companies of 60 privates no clerk is allowed, but the money for the use of the regiment is remitted to the commanding officer, who accounts for it like a regimental or battalion clerk. No adjutant, surgeon, regimental or battalion clerk, or quarter-master, is capable of being appointed captain of a company; nor can any captain of a company be appointed to those places; and no officer who is intitled to half pay, during the time he serves as lieutenant, ensign, adjutant, regimental or battalion clerk, quarter master, or surgeon in the militia, is to forego such half pay; but instead of the oath usually required of half pay officers, they swear they have no place or employment of profit, except that which they enjoy in the militia regiment.

TRAINING AND EXERCISE. The militia are called out twenty eight days in every year, for the purpose of being trained and exercised; and in places where the whole militia is not trained or exercised at the same time, the respective parts are taken successively, until all have completed their twenty eight days. The times, proportions, and places are then appointed

pointed, with the approbation of his majesty, by the lieutenants, or deputy lieutenants, at, or occasionally without, a general meeting. They cannot order less than two companies of sixty private men at the least, with officers and serjeants, corporals and drummers in proportion, to be trained and exercised together, unless the militia of the county, riding, or place do not amount to so many. The place of assembling may be altered at a general meeting of lieutenancy; but the clerk must take proper means for distributing notices, which are finally fixed on the doors of the churches or chapels for general information; and the constables give notice in writing to each militia man severally, at his place of abode. If a regiment or corps has been disembodied, his majesty may order it to be trained or exercised for any time not exceeding a year. During the time of exercise, the mutiny act and articles of war are in force, and offenders may be tried by courts martial, duly constituted, but which can have no power over life or limb. On these occasions, the officers and men become intitled to receive pay, but calculated only from the day on which they join their regiment or corps. If a militia man in his way to the place of exercise falls sick, any justice, or mayor of a town, may order for him proper relief, which the officers of the parish must give, and the account being afterward verified before and allowed by a magistrate, the parish officer is reimbursed by the treasurer. At such times, too, the officers and privates may be billeted, like those of the regular troops; and at all times the serjeants, corporals, and drummers may be billeted, and provided with lodging, fire, and candle. For the conveyance of the arms and necessaries to the place of training, justices must, on the requisition of the lord lieutenant, deputy lieutenants, or commanding officer of the regiment, obtain from the parishes and places through which they are required to pass, sufficient carriages and able drivers. For these carriages the proprietors receive, if drawn by five horses, six oxen, or four oxen and two horses, one shilling per mile; if four horses, ninepence, and so in proportion; these sums are paid by the commanding officer to the chief constable of every parish and other place, and he has power to compel the proprietors to let their vehicles for one day's journey, but no more. If the charge inevitably exceeds the allowance above mentioned, the treasurer of the county where the excess is incurred must pay it on demand.

The law also directs that stoppages, at the rate of four pence per day, from the pay of each private shall be made for linen and repairs of arms; that the colonel or commanding officer shall in fourteen days, or seven days if all do not meet

meet

meet at once, make a return of the true state of his corps to the lord lieutenant, with a duplicate to the clerk of general meetings; that captains shall make a correct and accurate return of the state of the classes of men belonging to their companies, and deliver it to the adjutant, or if none, to the commanding officer, who is to forward to the clerks of subdivision meetings proper abstracts to instruct them in correcting their books of enrolment, and to the clerk of general meetings, who, within two months after the time of exercise is expired, transmits correct abstracts to the secretary of state. And every person failing to make any of these returns, forfeits for each offence 50*l*.

Men not attending these times and places of exercise, unless prevented by illness, are considered as deserters, and if not taken till the time is over, forfeit 20*l*.; the same penalty is inflicted on those who attend and afterward desert, and if they are unable to pay, they are to be committed to the house of correction to hard labour, or to the common jail, for six months. When a deserter has been absent four months, a new man must be ballotted for; but if the deserter is afterward found, he must serve out his time.

If the Irish militia are so inclined, they may volunteer to serve in Great Britain, and his majesty may accept their offer to the number of 10,000, but the offer must be purely voluntary; the defalcations in such regiments are not to be filled by new ballots in Ireland during their absence; but the offer once made and accepted is binding and cannot be retracted.

ARMS AND ACCOUTREMENTS. All muskets delivered for the service of the militia are marked with the letter M, and the name of the place to which they belong; and if any militia-man sells, pawns, or loses any of his arms, clothes, accoutrements, or ammunition, or neglects or refuses to return them in good order to his captain, or the person appointed to receive them, he forfeits for every offence a sum not exceeding 3*l*. or for default of immediate payment, is committed to the house of correction, to hard labour, for any time not exceeding three months. And if any person knowingly buys, takes in exchange, conceals, or otherwise receives any militia arms, clothes, or accoutrements, or any such articles belonging to any militia-man as are generally deemed regimental necessaries, or any public stores or ammunition whatever delivered for the militia, he forfeits for every offence 10*l*.; or must be committed to jail for six months, or be publicly or privately whipped at the discretion of the justice.

The arms, accoutrements, clothing, and other stores belonging to every regiment, or corps of militia, when not embodied,

bodied, are kept in such convenient place, as the colonel or other commandant shall direct, with the approbation of the lieutenant of the county or place; and the general meeting of the lieutenancy may direct a fit place to be provided, or, if necessary, built for the purpose; the hire or cost to be paid by the treasurer of the county, out of the county rates.

CLOTHING, PAY, AND ALLOWANCES. The pay of militia when embodied is exactly the same as that of other infantry. When they are unembodied, it is regulated by annual acts. The last passed for this purpose directs, that in every place where the militia is raised, the receiver-general of the land tax shall issue and pay the whole sums required, in the manner and for the uses following: for the pay of the militia for four calendar months in advance, at the rate of 6*s.* a day for each adjutant, where an adjutant is appointed; 3*s.* a day for each quartermaster, where appointed; of 1*s.* 6*d.* a day for each serjeant, resident at the head quarters, with the addition of 2*s.* 6*d.* a week for each serjeant-major, where appointed; 1*s.* 2*d.* a day for each corporal; and 1*s.* a day for each drummer, with the addition of 6*d.* a day for each drum-major, where appointed; and also at the rate of 4*d.* per month, for each private man and drummer, for defraying contingent expences; half of which is to be applied in aid of the stoppage fund of each regiment, or corps, for providing the men while absent from home, with necessaries, under the direction of the colonel, or other commandant; and also for half a year's salary for the clerk of each regiment, or corps, at the rate of 50*l.* a year; and also for the allowances to the clerks of the general and subdivision meetings; the clerk of the general meetings having 5*l.* 5*s.*, and the several clerks of the subdivision meetings, 1*l.* 1*s.* for each meeting; and also for clothing, after the rate of 3*l.* 10*s.* for each serjeant, and 2*l.* for each corporal or drummer, with the addition of 1*l.* for each serjeant-major and drum-major, provided these persons have not been clothed within two years; and with respect to the privates, at the rate of 1*l.* 12*s.* for each. But any serjeant, corporal, or drummer, absent on furlough or licence, receives for that period as follows: serjeant, 1*s.*; corporal, 8*d.*; and drummer, 6*d.* per day. Serjeants being on the establishment, or out-pensioners at Chelsea Hospital, may receive their militia pay besides their allowance; and an additional remuneration is made to the clerks of subdivision meetings, for their various services. The payments for the regiments are made at the stated periods, by the receiver-general of the land tax, to the clerks of the regiments or battalions, who for the use of the subalterns, pays proper sums in advance into the hands of the adjutants, and for the privates into the hands of the captains, who are respectively

ively obliged to make out accounts, and pay over the surplus. The regimental or battalion clerk also pays out of the money issued to him, for the repair, carriage, and removal of arms, and in aid of the stoppage fund, if required by the commanding officer; he makes up his accounts three times in a year, and the balance in his hands, if any, forms a regimental stock purse, in aid of which all penalties, levied for offences, not otherwise disposed of, are applied.

During the twenty-eight days of exercise, pay is issued by the receiver-general, to the regimental and battalion clerks, at the rates following: 9*s.* 8*d.* per day for each field officer, and for the captain of each company; 5*s.* 5*d.* for each lieutenant; 4*s.* 8*d.* for each ensign; 10*s.* for each surgeon; 2*s.* per day (additional) for each adjutant; 2*s.* 8*d.* (additional) for each quarter-master; and 1*s.* for each private. There is also a further allowance of beer money, at the rate of one penny per day, for each private, serjeant-major, drum-major, serjeant, corporal, and drummer, but when the men are billeted, these sums are paid to the publicans, in the same manner, and on the same conditions, as in the case of regular infantry.

Proper regulations are established for making up, verifying and checking accounts; when the militia are embodied, the pay from the receivers general ceases; the regimental or battalion clerks give security for duly accounting for the monies in their hands; and if they fail, the receiver general must put the bonds in suit, and if he recover he has a poundage of 5*l.* per cent.; and for the better encouragement of militia-men, who may be attached to the service of the artillery, his majesty may raise their pay to the same amount as is given men in the royal artillery.

ALLOWANCES TO SUBALTERNS. Any adjutant of militia, having served thirty years in the whole in the militia or regulars, but having been fifteen of those years an adjutant of militia, and becoming incapable of further service through age or infirmity, having no other office or employment of profit, civil or military, except as regimental, or battalion clerk, may, on producing the necessary certificates of service, demand from the receiver general 6*s.* per day.

Surgeons in the like situation, having served thirty years in the militia, are intitled to 3*s.* per day.

When the militia is disembodied, the receiver general is to pay to every *reduced adjutant* 3*s.* a day, and to every *reduced serjeant major* 1*s.* per day, with an addition of 2*s.* 6*d.* per week. The term from which these allowances commence, is ascertained by certificates from the commanding officer, indorsed by the minister and churchwardens where the adjutant or serjeant-major resides; and on production of them, the collector of the

land tax for the place, must pay the money under penalty of 10*l*. Regulations are adopted, to prevent frauds and mistakes in case of removal, by proper certificates of residence; the parties are liable to be called out into service, when required by the commanding officer; and from that time, they become entitled to their original pay, and the allowance ceases, and so it does if they are promoted to a better rank, or if they neglect to send proper certificates of their residence, or refuse to join when required, unless prevented by sickness or other sufficient cause.

ACTUAL SERVICE. In case of actual invasion, or imminent danger, or of rebellion, or insurrection, the king may, on notice to parliament, if sitting, or if not, on proclamation, order the lords lieutenants, or deputy lieutenants, with all convenient speed, to draw out and embody all the militia, or so many as he shall judge necessary, and in the manner best adapted to the circumstances of the danger, and to put them under the command of such general officers as he shall appoint, and direct them to be led by their respective officers, into any part of Great Britain, but not out of it. From the time of their being embodied until their return to their own county, riding, or place, and being disembodied by his majesty's order, they are all subject to the mutiny act, and the articles of war. The king must however assemble the parliament, within fourteen days after calling out the militia.

On these occasions, the lord lieutenant, or the deputy lieutenants, direct the chief constables and other officers, in every place, to give notice in writing to the several militia-men, and if they do not appear, and march according to the order, they are treated like deserters from the regulars, and any person harbouring them incurs a penalty of 100*l*.; but as some of the men, who live at a distance from the place where they may be ordered to, could not travel so far without assistance, the subdivision clerk advances to every one so many days pay, as will support him till he reaches the place appointed, counting that he marches not less than ten miles per day, with a proper number of halting days; and the money so advanced is repaid by the receiver general of the land-tax. Besides this, the receivers of the assessed taxes pay into the hands of every captain, or other commanding officer of militia, one guinea for each man under his command, which the officer must give to the private, or lay it out for his benefit, in such way as he shall think fit, accounting for it to the privates by the 24th day of the ensuing month.

And when the militia is drawn out, if any person not possessing land, goods, or money, of the clear value of 500*l*. is balloted, and serves, or finds a substitute, the church-wardens or overseers of the parish, on receiving an order, under the hands

of two deputy lieutenants, must pay him such sum as the deputy lieutenants shall judge to be half the current price paid for a substitute, under penalty of 10*l*.

When regiments are absent from the place to which they belong, the commanding officers must apply to every man, whose term of service is within four months of expiring, and who is still fit to serve, and inquire whether he is willing to continue in the service for a new term, and at what price, and on the first day of January, and every other alternate month, the officer is to transmit to the clerk of the general meetings a list of such men as are willing to continue, specifying certain necessary particulars, and subscribed by them, which subscription binds them to serve. The clerk of the general meetings sends extracts of these lists to the clerk of the subdivision meetings, and the deputy lieutenants may decide whether they will assent to the enrolment of such men; and if they approve it, may order the church-wardens and overseers of the place to which the militia men belong to remit the bounties to the paymaster of the regiment; the receiver general of assessed taxes also pays for every such man, a guinea in the manner already mentioned to be paid on their marching.

When the whole militia are ordered to be embodied, vacancies occasioned by default, or desertion, are filled by a ballot. When only part of the militia is embodied, notices are given by the constables so as to obtain a general muster, and the deputy lieutenants having selected, by choice or ballot, the required number, the men answer to their names on being called over; the deputy lieutenants publicly declare who of them are to be embodied; it then becomes their duty to march immediately, and the rest are for the time discharged from further attendance, being first paid one shilling per day for the time they are absent, but not exceeding three days. These selections are not however purely arbitrary; for when the number required amounts to all that are contained in the first, or first and second classes, formed as before mentioned, those men are to be taken in preference, and so on, descending through all the classes, not touching the lower, till the higher is exhausted. The deputy lieutenants too may reform the lists of classes, according to the circumstances which may have arisen since their last meeting. In case of vacancies in these partial embodyings, by default, or desertion, or in any other manner, a fresh ballot is to be made in the proper subdivision, according the rule before declared. Volunteers may be taken on these occasions, if under thirty-five, and unincumbered with children under fourteen years of age. The king may, at his pleasure, embody the residue of the militia of any county or place, or any part of it; and he may, in like manner

disembody them, either in part, or in the whole; but the men are still subject to the same regulations as before they were drawn out.

RELIEF OF FAMILIES WHEN THE MILITIA IS DRAWN OUT. If any non-commissioned officer, or drummer, ballotted man or substitute, shall, when embodied, and called out into actual service, leave a family unable to support themselves, the overseers of the parish, tything, or township, where the family dwells, must, by order of one justice, pay to them out of the poor rates, a weekly allowance, not exceeding the price of one day's labour in husbandry, nor less than one shilling for every child, under the age of ten years; and for the wife the same sum; and if the rates are insufficient, a new one may be made for the purpose. This rate of allowance may be ascertained by the justices, at the Michaelmas general quarter sessions, and will be binding on all other magistrates.

From the benefit of this allowance, the families of the following persons are excluded: those who have not joined, or do not continue with their regiments; women who quit their abode without licence from magistrates or overseers, unless for the purpose of residing with their husbands; the family of any man who, at the time of enrolment, fraudulently declared that he had neither wife nor family, or that he had not, when in fact he had, more than one child; unless however the militia-man, to the satisfaction of the justice to whom application for relief is made, undertakes to support all his family, except his wife and one child; the family of every non-commissioned officer, or drummer, reduced to the ranks for misconduct; and the families of substitutes who, after enrolment, have married without the consent of their colonel or commanding officer. The families of persons in the last mentioned situations, must, if in distress, be relieved as ordinary casual poor, but others are not to be so treated, nor to be sent to the workhouse, nor deprived of their legal settlements elsewhere; nor do the men forego the right of voting for members of parliament. The allowances so paid by the overseers of the parish, where the families happen to reside, are refunded by the treasurer of the county to which the militia-men belong, and by them demanded again from the parishes for which the men serve, having been first allowed at a general quarter session. The payments made by overseers are allowed in their accounts; but if they refuse, or neglect to pay, under any order, they incur a penalty of 5*l*.

DISOBEDIENCE AND DESERTION. Every adjutant, serjeant-major, and drummer of the militia, is subject to the acts for punishing mutiny and desertion, and for the better payment of the army and their quarters, and to the articles of war, under the command

command of the colonel or commanding officer, who may direct courts martial to be held for their trial, for any offence committed during the time the regiment or battalion was not embodied; but so that no punishment shall extend to life or limb; and if a sufficient number of officers belonging to the regiment cannot be found to form a court-martial, the commanding officer may order officers of militia regiments, residing within ten miles, to assist as members, but their sentence cannot be put into execution, till confirmed by the commanding officer, by whose order the court was assembled. Serjeants, corporals, and drummers, may by order of a court-martial, be reduced to the ranks, there to serve for fifteen months.

A serjeant, corporal, or drummer absenting himself from the place where the arms are deposited without a furlough, forfeits all pay during the period, and is liable to be treated as a deserter. A private not appearing, or not abiding the orders of the deputy lieutenants, is in the same predicament. Substitutes not joining when the militia is embodied, may be apprehended and punished as deserters, or may, by sentence of court-martial, be ordered to serve for a further limited time in the militia, or without limitation in the regulars. Deserters may be apprehended by means of a certificate, signed by their commanding officer, and transmitted to the adjutant, or serjeant major of the battalion, or corps, serving near where they are residing; and they are passed under a guard, from one militia regiment to another, till they reach their own, and justices being informed or knowing of deserters, may order them to prison for safe custody, till a sufficient party is sent to convey them away. If the king publishes a proclamation for pardoning deserters on their joining their regiments, the commanding officers of militia, after the day mentioned in the proclamation is expired, shall make lists of defaulters, deserters and absentees, and give them to the subdivision clerks, to be published in proper newspapers, for the expence of which the receiver general shall supply money; and all justices, magistrates, constables, and peace officers, may seize such persons and lodge them in prison, till a court-martial can be held, which on their being identified, shall sentence them to serve in the regulars: the persons apprehending them are entitled to a reward of 20s. above any reward given by the mutiny act, to be paid by the clerk of the regiment or battalion to which the deserter belongs, on warrant from the justice before whom the deserter was committed.

PRIVILEGES OF THE MILITIA. For one year ending the 25th March 1805, certain allowances were directed to be made to officers who were not qualified by the possession of property, to hold a captain's commission; that is to say, to a lieutenant or surgeon,

surgeon, 25*l.* 18*s.* 6*d.*, and to an ensign, 21*l.* 7*s.*; these could not extend to more than ten senior lieutenants in any regiment, but were limited to smaller corps, in proportion to the number of companies. The permanent privileges are, that a half-pay officer in the regulars having a commission in the militia, not higher than that of lieutenant, does not forego his half-pay; a commission is not considered a place of profit, so as to vacate a seat in parliament; an officer in the militia cannot be compelled to serve as sheriff; no officer, or private, is liable to penalty or punishment for his absence, while going to vote for the election of a member of parliament; they are exempt from parish offices, and highway duty; men who have served in the militia when drawn out in actual service, may, if married, set up and exercise any trade in any town in Great Britain, without molestation, and not be subject to removal, until actually chargeable to the parish. Chelsea pensioners do not renounce the benefits of that situation by serving in the militia; serjeants, corporals, and drummers, after serving twenty years, are entitled to be placed on that establishment, and so are non-commissioned officers and privates, if maimed or wounded in actual service.

FURTHER PARTICULARS. Regulations are also made for levying and apportioning a penalty of 10*l.* for every man, who ought to be raised in any county or place, but is not; for generally enforcing the execution of the law, and administering the oaths. The lords lieutenants and deputy lieutenants are indemnified for acts done in execution of their office, in the same manner as justices of the peace. Fines, exceeding 20*l.* are to be recovered by action in any of the courts at Westminster; but smaller fines by proof on oath before one justice, to be levied by distress, and applied, where not otherwise particularly directed, to increase the public stock of the regiment, in which they arise. No order or conviction is removeable by certiorari; and persons sued for acts done in execution of their duty, if they gain a verdict, recover treble costs.

GENERAL EXCEPTIONS. The city of *London* and the *Tower hamlets*, as to their militia, are regulated by particular acts of parliament; in the *Stannaries*, the lord warden arrays, assesses, and musters the tanners, according to immemorial privilege and custom; in the *Cinque-ports*, the lord-warden also exercises the powers generally committed to the lords lieutenants of counties; in *Sussex* and *Kent*, the churchwardens and overseers execute the powers elsewhere given to constables; the *Isle of Wight* furnishes its quota to the militia of Southampton, the powers for that purpose being vested in the governor, who appoints five deputies to attend him, the men remain for the internal defence of the island till the king directs otherwise; *Berwick upon Tweed* is similarly circumstanced.

circumstanced with respect to the county of Northumberland ; the chief magistrate of the town, acting as lord lieutenant, and appointing under him five deputies. It is also declared that the constabulary of *Craike* which belongs to Durham, but is surrounded by the North Riding of Yorkshire, shall be deemed within that Riding ; part of the parish of *Maker* is deemed within Cornwall ; the parish of *Wokingham* in Berkshire ; the parish of *Filey*, in the East Riding of Yorkshire ; *Threapwood* is considered part of the parish of Worthenbury in the county of Flint ; and *Stamford Baron* in the county of Lincoln.

REDUCTION OF THE MILITIA. 'The statute 44th Geo. III. c. 56, commonly called the additional defence act, directs that the militia raised up to that time, shall be reduced to the specified quotas, then to serve exclusively of any supplementary militia. From the passing of that act, no ballot was to take place in any county where the number of men actually serving should exceed or amount to the original quota ; and, when it should be necessary to reduce the number of officers, the reduction was to begin from the youngest, but the officer reduced is competent to succeed to any vacancy of an equal rank with that which he filled at the time such reduction took place, or may fall back again into the post he quitted on his promotion, at his option, preserving his rank in the general line of the militia.

ADDITIONAL FORCE. 'The statute last mentioned was framed to supersede one, for forming an army of reserve and for the purpose of establishing a permanent additional force, instead of permitting the undefined increase of those bodies which were merely occasional or temporary. It fixed a number of men to be raised in every county, empowered the justices in session to apportion the number among the parishes, and directed the manner in which the parish officers were to raise, examine, and pass the men, which they were to do, under a penalty of 20*l.* for every man deficient. A detailed statement of this subject had been prepared, but as it was probable that the act would be repealed, it was thought expedient to omit it, and give in the way of an appendix, if possible, some account of the measure to be substituted.

GENERAL LEVY. At the beginning of war with France, in 1803, as the ruler of that country made loud and boastful threats of invasion, the ministry brought in a bill, reciting that it was expedient to enable his majesty to exercise his prerogative of requiring the military service of all his subjects, in case of invasion, and requiring the lieutenants, deputy lieutenants, and justices of the peace, constables, tything men, headboroughs, churchwardens, overseers of the poor, and other officers, to carry the act into execution.

MEETINGS.

MEETINGS. It ordered that a general meeting of lieutenancy should be held in each county, within ten days after the passing of the act, when the lieutenants, deputy lieutenants, or other officers, should issue orders to the chief constables of the several hundreds and districts, within their counties, requiring each of them to issue an order to all constables, tything-men, headboroughs, or other parochial officers, to return to the deputy lieutenants, when and where they should point out, fair and true lists of the names of all the men, at that time dwelling within such parishes, between the ages of 17 and 55 years. They were also to appoint the first subdivision meeting, and a day for a second general meeting, if necessary; and during the month of October in every year, or oftener if necessary, a like meeting is to be held in every county, for the purpose of carrying the act into execution.

LISTS TO BE REQUIRED. The lieutenants and deputy lieutenants, in obedience to his majesty's orders, are to procure returns of all boats, barges, waggons, carts, cars, horses, and other cattle and sheep, and of all hay, straw, corn, meal, flour, and other provisions, and of all mills and ovens, and other things which may be useful to an enemy, or applicable to the public service, within their respective counties and places; and which of such boats, carriages and horses, the owners thereof are willing to furnish, in case of emergency, for the public service, either gratuitously or for hire, and with what number of boatmen, drivers, and other necessary attendants, and upon what terms and conditions, and of all such other particulars as shall be required, for enabling his majesty to give the necessary orders for removing, in case of danger, all who are incapable of removing themselves, and also for removing all boats, carriages, horses, sheep, corn, and other provisions and things, or for employing the same in the king's service, as the case may require; and generally to give such directions, as may be deemed most likely to defeat the views of the enemy, and most advantageous for the public service. The lieutenants or deputy lieutenants of counties, also the deputy lieutenants, within their respective subdivisions, may (when they think proper) appoint from the fourth class of persons, to be enrolled for military service under this act, such number as may be willing to act as special constables in the execution thereof, whose names must be transmitted to the chief constable, or other proper officer of the district; and such special constables may perform all the functions of other constables, in the execution of any of the purposes of the act, and shall not be liable to military service, while they act in that capacity. Some exceptions from the duties of constables, are made in favour of Quakers, and members of the society called *Unitas Fratrum*.

DUTIES OF CONSTABLES IN MAKING OUT LISTS. Nearly in the manner prescribed for the militia, the constables are to give notice, and to demand from the occupiers of, and lodgers in, every dwelling house, lists of every man resident therein, and distinguishing whether he is married or unmarried, whether he has any child or children under the age of ten years, and whether he is willing to engage himself as a volunteer, under the act, and also distinguishing therein other particulars, according to a prescribed form; and these lists are to be made out, under penalty in case of neglect of 10*l.*, or on refusal of 20*l.*

CLASSES. Within ten days after delivering such notices, the constables, or other officers, shall make out annually, a list of the names of all the men at that time dwelling within their respective parishes, between the ages of 17 and 55 years, distinguishing their ranks and occupations, and those who have made returns to such notices, from those who have neglected; and dividing the several persons returned, according to their respective ages, situations, and descriptions, into the following classes, viz. in the *first* class, all the men of the age of 17, and under 30 years, unmarried, and having no child living under ten years; in the *second*, all the men of the age of 30, and under 50 years, unmarried, and having no child living under 10 years; in the *third* class, all the men of the age of 17 and under 30 years, who are, or have been married, and have not more than two children under 10 years; and in the *fourth* class, all the men not included in any of the former classes; and also distinguishing in such lists, which of the persons so returned labour under any infirmity, likely to incapacitate them from military service, and which of them are willing to engage to serve as volunteers under the act; which of them are clergymen, licensed dissenting ministers, Quakers, people of the congregation of *Unitas Fratrum*, or medical practitioners, being house-holders, or persons serving as officers or otherwise in the army, navy, marines, militia, sea fencibles, or volunteers; and which of them are constables, or other peace officers, acting in the execution of the present act. Copies of these lists are to be affixed on the doors of churches, or in some other conspicuous situation, with notice of the time of hearing appeals; and all ministers, and churchwardens, and other parish officers are required to assist in making out the lists, and in classing the men. These lists are to be perfected after the hearing of appeals by the deputy lieutenants, who have, in that case, a final jurisdiction, and entered on subdivision rolls; the subdivision clerks then send copies of the rolls to the clerk of general meetings, and these forward true abstracts to the secretary of state.

PENALTIES.

PENALTIES. The penalties are: on subdivision clerks making false entries on the rolls, 20*l.*; on clerks of general meetings neglecting their duty, or making false returns, 100*l.*; on persons attempting to induce parochial officers to make false returns, or erase or omit names, 50*l.*; on refusing to tell, or falsely telling the christian or surname of himself, or any lodger, 10*l.*; on a constable or other officer refusing to attend, or disobeying the orders of the deputy lieutenant, one month's imprisonment, or fine, not more than 20*l.* nor less than 40*s.*; persons obstructing a constable, or other officer from acting, not less than 5*l.* or more than 100*l.* or to be imprisoned not exceeding three months.

PERSONS EXEMPTED. The lord chancellor, the keeper of the great seal, chief justice of the court of king's bench, master of the rolls, chief justice of the court of common pleas, chief baron of the exchequer, the puisne judges of the court of king's bench or common pleas, and the barons of the court of exchequer; all persons labouring under any infirmity rendering them incapable of military service, clergymen, licensed dissenting ministers, not carrying on any trade, and exercising no other occupation for their livelihood, except that of a schoolmaster; Quakers, and people called *Unitas Fratrum*; medical men actually practising as such, and being housekeepers, persons actually serving as officers, non-commissioned officers, drummers, or private soldiers, in his majesty's army, or in the marines or the militia, or enrolled and serving in any corps of sea fencibles, or volunteers whose services are accepted by his majesty, persons actually serving as officers or seamen in his majesty's navy, lieutenants, or deputy lieutenants of counties, constables, or other peace officers; and all persons leaving the kingdom.

ARMS. His majesty may, from time to time, direct that any parishes shall be provided with arms and accoutrements, in order to the instruction of the men enrolled for military service, under such regulations as shall be communicated by his majesty's order to the lord lieutenant, or deputy lieutenants. These arms and accoutrements are to be kept in the church or chancel, or any other safe place in the parish, as the lord lieutenant, or deputy lieutenants shall appoint, under the custody of the churchwardens, constables, and other parochial officers, who are to obey the directions of the lord lieutenant, or deputy lieutenants, respecting their custody or removal. The expence which may be incurred in keeping them in order is to be borne by the parish, or united parishes, or extra parochial places, for which the same shall be provided; and two or more deputy lieutenants of the subdivision are, once at least in every year, to view them, for the purpose of ascertaining their state and condition; and they, or any other deputy lieutenant, and one justice, may make orders

orders for the payment of such expences, and if necessary, may direct a rate to be made for the purpose, and levied like a poor rate.

All muskets, delivered for the purpose of training and exercising the men, are to be marked distinctly, with the letters G. R.; and in case any man shall not re-deliver, or duly replace the arms after exercise, or shall sell, pawn, lose, or wilfully damage any arms or accoutrements delivered to him, he shall forfeit not exceeding forty shillings, or be committed to jail not exceeding a month. And if any person knowingly and wilfully buy, take in exchange, or conceal, any such arms or accoutrements, he forfeits 10*l.* and in default of payment is committed for three months.

TRAINING AND EXERCISE. The king may order the lieutenant, or deputy lieutenants of any county, to cause the persons comprised in the first, second, and third classes, or any of them, to be trained and exercised; and on receipt of such order, the lieutenant or deputy lieutenants shall direct the deputy lieutenants of the respective subdivisions to regulate the times and places of exercise for such parishes respectively; and such deputy lieutenants shall cause the men to be trained and exercised, two hours at least, on every Sunday, either before or after divine service, or on some other convenient day in the week, between the 25th of March, and the twenty-fifth day of December in every year, and cause public notice of such times and places of exercise and training to be given in the churches or chapels of the respective parishes during divine service, and to be affixed on the doors there, and in the market places, or on some other convenient and conspicuous place; and such deputy lieutenants may, if they deem it expedient, order such men to be exercised on any other additional day or days in the week, taking care to interfere as little as possible with their occupations. Before the return of the subdivision rolls, his majesty may signify what number of men, to be comprised in the first three classes, shall be trained and exercised in any county or subdivision; if the number signified shall, upon the return of the subdivision rolls, be found to equal, or exceed the whole number comprised in those classes, then the whole number of men, comprised in such classes respectively, is to be trained and exercised; if less than the whole are required, then such proportion only of the classes is to be trained and exercised as shall equal the number signified by his majesty; and the deputy lieutenants of subdivisions are within seven days to fix the number; and the men to be trained and exercised are to be chosen by ballot.

OFFICERS. The lord lieutenant, or, in his absence, three deputies, may appoint proper officers, and non-commissioned officers,

cers, from among the men residing in any parish, to train and discipline the privates, in the proportion of one captain, two lieutenants, one ensign, three serjeants, three corporals, and one drummer, for every 120 men; these officers may be displaced by the king's order, and rank with the youngest similar officers of militia. Captains of companies may appoint non-commissioned officers, in the proportion of six serjeants, six corporals and two drummers to every 120 men. The deputy lieutenants of subdivisions, or the captains and other commanding officers of companies may employ any serjeant, or other person, being an out-pensioner of Chelsea or Kilmainham hospital, or any other fit person, having served in the regulars, marines, militia, or fencibles, or in any volunteer corps, for the purpose of instructing the men in the use of arms, and may allow him any sum not exceeding 2s. 6d. per day, to be paid by the overseers, out of the poor rate, upon an order signed by a deputy lieutenant, or by one justice of the peace; and any overseer, refusing to pay such allowances, forfeits double the amount.

MUSTERS. A constable or other officer is to attend every day at the exercising of the corps, and if he behaves properly, he will at the end of the year, on a certificate of two deputy lieutenants be entitled to a sum not exceeding 5*l.*; but if he fails in his duty he incurs a penalty of ten shillings for every day. On the days of training, muster rolls are to be called, and the commanding officer, or in his absence the constable, is to mark down the persons present, and the absentees, and sign and certify the correctness of the roll. Persons having religious scruples may, on making oath they have no other reason for desiring to absent themselves from training, be dispensed with on Sunday, but must attend some other day; and the captain, or other officer of any company, may grant a certificate to persons, who by diligent attendance, for twelve calendar months at least, shall have attained a due degree of proficiency in the use of arms, which being allowed by any deputy lieutenant, they shall thenceforth be wholly excused from all further attendance, and discharged from all fines for non-attendance. The king may order extraordinary musters, but on those occasions, every man present, if it be in the ordinary times of labour, may receive one shilling on production of the roll, to be paid him by the overseer of the poor, who is at the end of the month to be repaid by the receiver general.

FINES. Persons whose place of residence is not more than four miles from the place of exercise, are fined for neglecting to attend, five shillings; but if they are excused from paying the poor rates, the fine is reduced to one shilling; but those who neglect to attend three successive days, pay every time instead
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of five shillings, forty shillings, and instead of one shilling, five shillings. Those who, during the times of training, conduct themselves in an indecent or disorderly manner, or disobey command, are to be fined five shillings, or on non-payment imprisoned a week. All these fines, if not otherwise paid, may be levied by distress. Some causes of inevitable absence, as residence in another parish, if the party has been trained elsewhere in the time; or travelling by land or sea, are allowed as excuses from paying the fines.

DRAWING OUT AND EMBODYING. In case of actual invasion, or appearance of the enemy in force upon the coast, his majesty may give orders for embodying all, or any part of the men so trained and exercised, and cause them to be placed in any existing regiment, whether regulars, militia, or fencibles, appointed to serve in Great Britain, or to be formed into such new regiments, battalions, or corps, as he shall judge necessary, and to be put under the command of such officers as he may appoint, and led into any part of Great Britain for repelling and preventing invasion, or suppressing rebellion or insurrection; and from the time of any men being so drawn out, and embodied, until they return to their own counties, and be disembodied by his majesty's order, the officers of every description shall be subject to the mutiny act and the articles of war. But, whenever his majesty deems it expedient to take this step, the occasion of issuing the order must as early as possible be communicated to parliament, if sitting; and if not, then the occasion must be declared in council, and notified by proclamation; but no person drawn out, or embodied, is compellable to serve out of Great Britain. The mode of embodying is by precept from the lord or deputy lieutenants, to the head constables, and from them through the ordinary constables to the parties, in manner nearly similar to the militia; and although no invasion may have taken place, or any enemy have appeared, the king may give provisional orders in relation to the drawing out, assembling, and embodying these forces.

OTHER REGULATIONS. There are also provisions for giving proper notices of meeting, and signals of alarm, and for arranging ballots, if only a part of the force is called out. And it is provided, that whenever in any county, district, or parish, the number of volunteers who shall have agreed to march to any part of Great Britain, in case of actual invasion, or the appearance of an enemy in force on the coast, or for the suppression of any insurrection or rebellion then arising or existing, shall appear satisfactory to his majesty, he may suspend, as to such places, the operation of the act for a general levy; but every such volunteer corps, and all persons engaged to serve as volunteers, will be liable to march to any part of Great Britain, on actual

invasion, or the appearance of an enemy in force on the coast, or to suppress any rebellion or insurrection arising or existing, whenever summoned by the lords lieutenants, or upon any general signals of alarm. All persons serving as volunteers under this act are liable to be embodied, and commanded, and to serve for the same period, and in the same manner, as other persons liable to military service under the defence acts; but persons serving as effective members of volunteer corps, will not be liable to be placed in any regiment, battalion, or corps of regulars, militia, or fencibles. And all persons, whether members of volunteer corps, or volunteers under this act, who shall refuse to march, on such summons or signal, shall be deemed deserters, and subject to the mutiny act and articles of war. Persons called out are to take an oath of allegiance.

REMOVAL OF PERSONS AND THINGS. In case of actual or apprehended invasion, the king may, by order under his sign manual, authorize and empower the lieutenants and deputy lieutenants, on any emergency, and on requisition of the officer commanding within the district, or of such other persons as his majesty shall especially empower to make such requisition, to give the necessary orders, for removing any boats, barges, waggons, or other carriages, horses, cattle, sheep, hay, corn, or other provisions, or things, which may be of advantage to an enemy, or useful to the public service, and to take the same if necessary for the public service; and also to give the necessary orders for removing the inhabitants of any house, hamlet, or place, and especially such as shall be incapable of removing themselves in case of danger; and also, in case of necessity, to destroy any such boats, barges, waggons, or other carriages, horses, cattle, corn, or other provisions or things, and to remove, destroy, or render useless, any house, mill, bridge, or other building, and generally to act in the premises, as the public service and particular exigencies shall require.

PAY AND ALLOWANCES. When these forces are embodied they are paid like regiments of infantry, or militia, and are similarly entitled to Chelsea Hospital; they are, on being called out, to have from the receiver general, two guineas each for necessaries, and after the defeat or expulsion of the enemy, one guinea each over and above their pay, to enable them to return home; and their wives and children are entitled to relief in the same manner as those of militia men. But the persons so raised, and trained, are not exempt from being balloted for the militia.

PURCHASE OF LAND. Provision is also made for taking land wanted for the public service, and paying the proprietor a proper rent or purchase, either by agreement or by verdict of a jury, which can only be impaneled on a certificate from two
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deputy lieutenants that the land in question is really wanted; and a party dissatisfied may still appeal to the court of exchequer. The statute also makes the proper exceptions to favour the privileges of the Stannaries, the Tower hamlets, the Cinque ports, and the City of London.

FINES. The fines, penalties and forfeitures go in aid of the poor rates in the parish where they accrue; one justice may convict, and no objection is to be taken for want of form, nor is any conviction to be removed by *certiorari*.

VOLUNTEERS. In the act for the general levy, mention was made of volunteers; and such was the ardour of the people, at the beginning of the war in 1803, to press forward in defence of the country, that a greater number of volunteers offered their services than ever had been known on any former occasion; greater than government, reasoning from the experience of the past, could reasonably expect; greater than on the sudden could be supplied with arms; and sufficient to prevent altogether the necessity of training and disciplining under the statute for a general levy. The law then made for regulating these patriotic troops, was however by a succeeding administration repealed, and a new one passed, of which the following are the outlines.

ACCEPTANCE OF SERVICES. The king may accept the services of volunteer corps, and disband or continue them at pleasure; and every volunteer must take the oath of allegiance.

EXEMPTIONS. The commanding officer of any corps, at the time of returning every muster roll of his corps, shall (if required) give to every effective volunteer, resident, or liable to be ballotted for the militia, or any other additional force, in any other county, than that in which such muster rolls shall be returned, a certificate, which, on being delivered to the clerks of general meetings of lieutenancy for the county where such volunteer resides, will entitle him to exemption from service, as effectually as if he had been returned in a muster roll under this act. And every person enrolled, and serving as an effective member of any corps of yeomanry or volunteers, and certified as such, is exempt from being liable to serve personally, or to provide a substitute in the militia, or additional force, and remains exempted so long as he continues an effective member, unless in the offer or acceptance of service, it has been specified, that such exemptions should not be claimed; nor will exemptions be allowed to more than the established number of the corps. The term *effective* is explained to require four days attendance, if cavalry, and eight, if infantry, in the course of four months preceding each return made by the commanding officer, or, at least the proper number of days within the year; each being, if supplied, properly armed and accoutred, and if cavalry, mounted. The ballots for militia are made complete by de-

ducting the number of volunteers from the number of persons liable to be drawn; but no volunteer is exempt from ballot, and if drawn, and afterward discharged from his volunteer corps, for misconduct, he becomes immediately liable to serve in the militia; but if such volunteer has served during the war, and at the end of it his corps is disbanded, he is not then liable to serve in the militia, in consequence of that ballot. Cavalry volunteers are exempt too from the tax accruing on one horse, and both classes of volunteers, while effective, from that on wearing hair-powder; they are also while on duty, and in uniform, free from toll at turnpikes.

ARMS. The commanding officer of any corps receiving arms and accoutrements supplied at the public expence, or by subscription, may appoint a proper place in or near the parish, where his corps is formed, for depositing and safe keeping them, and employ proper persons to repair and keep them in good condition; and such sum as his majesty shall direct to be paid on that account may be demanded from the receiver general. Arms delivered out of the public stores are marked with the letter V, and initial of the county to which the corps belongs. There are penalties on selling, or pawning, and on purchasing them, and on purchasing stores or ammunition, accoutrements, or clothing given to volunteers; and persons having any such, or any musical instruments in their custody, and refusing to deliver them up, forfeit for every offence 10*l.* and double the value of the things, or are committed to jail for two months.

RANK OF OFFICERS. The officers rank with those of regulars and militia, as youngest of their rank; they sit in courts martial on the trial of members of their own body, but not on any others, nor can the regulars, or militia, sit in courts martial on them.

POWERS OF OFFICERS. The commanding officer may, when the corps is not on actual service, dismiss any private for disobedience, breach of discipline, neglect of attendance and duty, or other, in his judgment, sufficient cause, and strike his name out of the muster roll; but the person so dismissed still remains liable to pay all arrears of subscription, or fines which he had previously incurred, or may then incur by not delivering up his arms, accoutrements, and clothing; but such dismissions are subject to the declaration of his majesty's pleasure. In cases of misconduct under arms, not expressly provided for, the commanding officer may deprive the person misbehaving of the benefit of that day's attendance, and he may order such person into custody during the time of exercise.

EXERCISE. If any volunteer cavalry shall signify in writing, through their commander in chief, to the lord lieutenant of the county,

county, their desire to assemble under the command of their own officers, at any convenient place within the same county, for the purpose of being trained and exercised for any time not exceeding fourteen days, either successively or at intervals, within the space of twelve months, either in separate corps, or together with other corps of yeomanry or volunteer cavalry, or with regular cavalry, if his majesty shall think it proper; the lord lieutenant, or, in his absence, deputy lieutenants, may, with the king's approbation, signified through the secretary of state, direct an order to any justice of the county where such corps of yeomanry or volunteer cavalry are appointed to assemble, specifying the place at which, and the time during which, such corps, are to continue so assembled; and the justice shall issue his precept to the constable or other peace officer of that place, for quartering and billeting the non-commissioned officers, trumpeters, or buglemen, and privates, in the same manner as regulars; and the same rules are generally to be observed, except that the corps is not subject to the mutiny act, or articles of war. At these times the secretary at war, or his deputy, is, if required by the lord lieutenant, to issue for every private 2s. per day, and for every horse 1s. 4d. per day for any term not exceeding fourteen days. In all other cases, when corps are assembled on military duty, they are subject to military discipline, the mutiny act, and articles of war. All adjutants, serjeant-majors, drill serjeants, and serjeants of yeomanry or volunteers, receiving the constant pay of their rank, and all trumpeters, buglemen, and drummers receiving any pay as such therein, are subject to the mutiny act, and articles of war, and liable to be tried for any crime committed against such act, or articles of war, by any general or detachment, or regimental court-martial, according to the nature and degree of the offence, in like manner, and under the like regulations, as adjutants, serjeant majors, serjeants, corporals, or drummers of his majesty's military forces; provided that every such court martial be composed wholly of officers of the yeomanry or volunteer establishment: and no punishment awarded by such court martial is to extend to life or limb, except when such corps are called out in cases of invasion, or appearance of an enemy in force upon the coast.

RETURNS. The commanding officers of corps are to make certified returns on the first days of April, August, and December, to the clerks of general meetings of lieutenancy, of the number of men on the establishment and the supernumeraries in their corps, distinguishing the effective from non-effective, and stating the names of all such as have been admitted into, and joined the corps since the last return, the names of all persons

absent on leave, and all who have been discharged from, or quitted the corps since the last return; and also in all cases where exemptions are allowed, distinguishing the persons entitled, from such as are not entitled to them; and in all cases where any arms required by any corps, at the expence of his majesty, shall not have been supplied, stating such circumstance specially at the foot of the return. Accurate returns are also to be made to the secretary of state, and the general officer commanding the district, specifying the numbers of effective and non-effective men, as nearly as may be, in the form in which monthly military returns are usually made. Copies and abstracts of these returns are to be made by the clerks of general meetings, and forwarded to the clerks of subdivision meetings, under penalty of 50*l.* and a commanding officer making a false return, forfeits 200*l.*

RESIGNATIONS. Doubts having arisen respecting the right of volunteers to resign, it was enacted, 44 Geo. III. c. 54. that, except when summoned, or assembled upon actual service, in case of invasion or appearance of the enemy in force upon the coast, or voluntarily assembled for the purpose of doing military duty, under any of the provisions, or in any of the cases specified in the act, any volunteer may quit such corps, and he shall accordingly be struck out of the muster roll. But he must give fourteen days notice of his intention to the commanding officer, give up all arms, accoutrements, clothing, and appointments, furnished to him at the public expence, or by any subscription, in good order and condition, and pay all subscriptions and fines. Persons entering into his majesty's service are however instantly discharged from that of a volunteer corps; but those who are dismissed for misconduct are liable to serve in the militia, and deprived of all their privileges and exemptions. Persons aggrieved in any of these particulars, may appeal to two deputy lieutenants, or a deputy lieutenant and a justice.

ACTUAL SERVICE. In all cases of actual invasion, or appearance of any enemy in force on the coast of Great Britain, or of rebellion or insurrection, on the appearance of any enemy, or during any invasion, all corps of yeomanry and volunteers must, whenever summoned by the lieutenants of the counties, vice-lieutenants, or deputy lieutenants, or upon the making of any general signals of alarm, forthwith assemble within their respective districts, and be liable to march according to the terms and conditions of their respective services, whether general or limited, on pain of being treated as deserters; and from that time they are subject to all the laws and articles of war. Their commanding officers are, on these occasions, entitled to demand from the receiver general, two guineas per man for their
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their use; and the treasury may direct one guinea for every volunteer to be paid to the commanding officer by the receivers general; and the money shall be laid out in providing necessaries; and the commanding officer shall, within one month after the receipt, account to the parties entitled, for the application of it; but the commanding officer is not to draw money for any person who is not desirous to receive it. While on actual service, volunteers are to receive pay, and be billeted as other forces; and after the defeat and expulsion of an invading army, to be returned to their respective homes, and paid one guinea each toward their expences.

FAMILIES. While thus embodied, the wives and families of volunteers are entitled to the same relief, and under the same conditions exactly, as those of militia-men under the same circumstances.

PRIVILEGES. Commissioned officers disabled in actual service are entitled to half pay according to their ranks; non-commissioned, drummers, and privates, to Chelsea Hospital; and widows of those killed in service to the same compensations, as widows of regulars. Officers on half pay do not forego it by filling any stations in volunteer corps, nor do members of parliament vacate their seats by accepting commissions.

MONEY. The commanding officer of every corps is to keep an account of all monies paid to him on account, during their exercise; and within ten days after its termination, deliver the account signed, and pay the balance (if any) to such person as the secretary at war, or his deputy, shall direct. And all money subscribed by or for the use of any corps, and all arms, stores, ammunition, drums, fises, or musical instruments, or other articles whatever, belonging to, or used by any such corps, not being the property of any particular individual, are vested in the commanding officer, for all purposes of indictment or action; and no proceedings are discontinued or abated by the death, resignation, or removal of any commanding officer, but may be proceeded in by his successor. On non-payment of subscriptions or fines by members of corps, any commanding or field officer, or serjeant major by their order, may make application to magistrates, who may direct double the sum to be recovered by way of penalty, and if not paid, to be levied by distress on the defaulter's goods and chattels, and to be applied to the general fund of the corps; or the justice may mitigate the penalties to one half.

FURTHER REGULATIONS. These are the principal regulations relating to these troops; the statute 44th of the king already mentioned, has further provided, that in future, no rules or regulations relating to any corps shall be valid, unless trans-

mitted to the lieutenant of the county, and by him to the secretary of state; and if after twenty-eight days they are not disallowed by the king, they are considered as allowed and confirmed. And the king may also annul at any time any rules or regulations of any volunteer corps whatever.

AGENCY OFFICE. For transacting all matters relative to the pay and allowances of these corps, an agency office, under the direction of the secretary at war, is established in Spring Garden; in it are a general agent, with a chief, two subordinate, and several extra clerks.

ARTILLERY COMPANY. Besides the troops already mentioned, there are in some places peculiar corps, of which it is not necessary to give a detailed account, but the artillery company is of the most ancient establishment, and highest consideration among them. This association had its origin about 1585, when London being wearied with continual musters, a number of its gallant citizens, who had served abroad with credit, voluntarily exercised themselves, and trained others to the ready use of arms. The ground they used was at the north-east extremity of the city, nigh Bishopsgate, and had before been occupied by the "fraternity of artillery," or gunners of the Tower. Within two years there were near three hundred merchants and others sufficiently skilled to train common soldiers; and in 1588, some of them had commissions in the camp at Tilbury; but this association soon after fell to decay. From the company's register, the only book they saved in the civil wars, it appears, that the association was revived in 1611, by warrant from the privy council; and the volunteers soon amounted to six thousand. Three years after this, they made a general muster, when, according to contemporary authority, the men were better armed than disciplined. In 1622, they erected an armoury, towards which the chamber of London gave 300*l.*; it was furnished with five hundred sets of arms of extraordinary beauty, which were all lost in the civil wars. Their captain, during a part of those affrighted times, was Mr. Manby, who irrecoverably detained for his own purposes, the arms, plate, money, books, and other goods of the company. The protector was in vain solicited to enforce their being restored. In 1640, they quitted their old field of discipline, and entered on a spot of ground in Bunhill-fields, leased to them by the city. This company at present forms a regular battalion of infantry, consisting of a grenadier, light infantry, and battalion divisions; together with the matross division, for the use of two field pieces, presented in the year 1780, by the city. There is also kept up a division of the archers; archery being the art cultivated by the company, in days when the bow was an instrument of war. The command
of

of the battalion is vested in officers who are annually elected. This municipal corps is authorised and privileged by many royal patents and warrants; and particularly by one of his present majesty, under the sign manual, wherein his royal highness the prince of Wales is declared captain general. It consists of gentlemen of character and property, bound by a solemn declaration and obligation of attachment and fidelity to the king and constitution, and of readiness to join in supporting the civil authority, and defending the metropolis. It is regulated by a court of assistants, consisting of a president, vice-president, treasurer, the field officers; the lord mayor, aldermen, and sheriffs for the time being, and twenty-four elective members.

SEA FENCIBLES. The force called sea fencibles may also be reckoned among the associations purely for the defence of the realm. It comprizes all fishermen and other persons employed in the ports and on the coast, who from their occupation are not liable to be impressed, and they act either on shore or afloat. On actual service their daily pay is as follows: senior post-captains, 1*l.* 10*s.* and 5*s.* for contingencies; junior post-captains, 1*l.* 10*s.*; commanders, 1*l.* 1*s.* and 10*s.* 6*d.* per week for contingencies; lieutenants, 8*s.* 6*d.* per day. The senior post-captain of every district of sea fencibles has command of the armed boats, composing the armed flotilla for the fencibles of the district; and he regulates also all the signal posts within his district, at each of which there is a lieutenant. There are from three to six lieutenants at each district, according to the number of fencibles enrolled.

The districts of the united kingdom comprehended in their line of defence, with the general rendezvous of each, are as follows:

<i>District.</i>	<i>General Rendezvous.</i>
At Chatham, Rochester, &c. to Sheerness	Chatham
From Emfworth to Beachy-Head -	Shoreham
From Beachy-Head to Dungeness	Hastings
From Dungeness to Sandgate -	New Romney
From Sandgate to Sandown -	Dover
From Sandown to the North Foreland	Ramsgate
From the North Foreland to East Swale	Margate
From the Lower Hope to Blackwater	South End
From Blackwater to the Stour -	Harwich
From the Stour to Southwold -	Aldborough
From Southwold to Cromer -	Yarmouth
From Cromer to Forsdyke-wash -	Lynn
From Forsdyke-wash to the mouth of the Humber	} Boston

From

*District.**General Rendezvous.*

From the mouth of the Humber to the river Ouze	- - -	Barton
From the river Ouze to Flamborough Head	- - -	Hull
From Flamborough Head to the river Tees	- - -	Whithy
From the river Tees to North Shields		Hartle-Poole
From North Shields to St. Abb's Head		Berwick
The Frith of Forth	- - -	Leith
Coast of Argylehire	- - -	Dundee
Isle of Wight	- - -	Brading
From Embsworth to Calshot-Castle	-	Stokes Bay
From Calshot Castle to St. Alban's Head		Poole
From St. Alban's Head to Punccknole		Weymouth
From Punccknole to Teignmouth	-	Exmouth
From Plymouth to the Ram-Head		Plymouth
From Teignmouth to the Ram-Head		Dartmouth
From the Ram-Head to the Dodman		Fowey
From the Dodman to the Land's End		Falmouth
Scilly Islands	- - -	St. Mary's
From Land's End to Hartland Point		Padstow
From Hartland Point to Kingroad		Minehead
From Bristol to Gloucester, and Gloucester to Chepstow	- -	Bristol
From Chepstow to the mouth of the British Channel	- -	Swansea
From Kidwelly to Cardigan	-	Haverfordwest
Isle of Anglesea, &c.	- -	Holyhead
Coast of Lancashire, &c.	- -	Liverpool.

Kingdom of Ireland.

From Malin-head to Foon-head	-	Buonevana
From Foon-head to Teeling-head		Rutland
From Teeling-head to Donnegal	-	Killybegs
From Ballyshannon to Killala	-	Killala
From Killala to Blackfod-bay	-	Broadhaven
From Blackfod-bay to Killery harbour		West Port
From Killery harbour to Greatman's Bay		Birterbin
From Greatman's Bay to Blackhead		Galway
From Loop-head to Kerry-head	-	Tarbert
From Kerry-head to Blacket island		Tralee
From Blacket-Island to Valentia	-	Dingle
From Valentia to Dursey-Island	-	Snecm-harbour
From Dursey Island to Sheep's Head		Beerhaven

From

*District.**General Rendezvous.*

From Sheep's Head to Gulley-Head		Castle-Townshend
From Gulley-Head to Cork-Head	-	Kinsale
From Cork-Head to Youghall	-	Cove
From Youghall to Waterford	-	Passage
From Hooktower to Arklow	-	Wexford
From Arklow to Dublin	- -	Wicklow
From Donaghadee to Larne	- -	Carrickfergus
From Howth to Balbrigen	-	Malaheide.

MILITARY DISTRICTS. In order to render the operation of the land force equally easy, certain, and consistent, the kingdom is also divided into military districts, each having a proper proportion of troops, and a staff attached to it. These districts are as follows: the *Home*, which contains the whole of the counties of Middlesex and Surry; and places in Essex, within any plan of defence for the capital; Kent, to the river Cray and Holwood Hill inclusive; Hertfordshire and Berkshire. The head-quarters are at St. James's palace. The *Southern* district contains, Kent east of the river Cray and Holwood Hill; Sussex, and Tilbury Fort in Essex. Head-quarters are at Canterbury. It has a cavalry depot at Maidstone. The *South-inland* district extends over the counties of Bedford, Northampton, Oxford, and Buckingham. Head-quarters, Oxford. The *South-west* district contains Hampshire, Wilts, and Dorset. Head-quarters, Winchester. In it is included the grand army depot at the Isle of Wight. In the *Eastern* district are comprised Norfolk, Suffolk, Cambridge, Huntingdon, exclusive of the hundreds of Beacontree and Waltham, and Tilbury Fort. Head-quarters, Colchester. In the *Western*, are Devonshire, Cornwall, and Somerset, exclusive of the vicinity of Bristol, viz. Bath, Trowbridge, Bradford, Wells, and Axbridge, and any other place occupied by detachments from Bristol. Head-quarters, Exeter. The *Severn* district includes Gloucestershire, and vicinity of Bristol in Somerset, the counties of Worcester, Hereford, Monmouth, and South Wales. Head-quarters, Bath. The *Northern* contains Northumberland, Cumberland, Westmoreland, and Durham. Head-quarters, Newcastle. The *North-inland*, the counties of Derby, Nottingham, Stafford, Leicester, Warwick, and Rutland. Head-quarters, Litchfield. The *York* district is formed by Yorkshire and Lancashire, the head-quarters being at Beverley; and the *North-west* by Cheshire, Shropshire, Lancashire, North Wales, and the Isle of Man. Head-quarters, Liverpool. North Britain, Jersey, and Guernsey, form separate districts.

INSTRUCTION. The establishments for instruction in military affairs

affairs have not been numerous; and perhaps, while the opinion of the illegality of a standing army is tenaciously maintained, they will not be duly popular. The experience of late years has however been sufficient to convince the British nation, that officers of the most finished description are no less necessary in the military, than in the naval service.

ACADEMY AT WOOLWICH. The most ancient and best known place for instruction in military affairs, is the Royal Academy established at Woolwich, under the board of ordnance, for the purpose of qualifying of young gentlemen, intended as candidates for the office of engineer, in the military branch of that office; these are called *cadets*, and are appointed by that board. They are taught the principles and art of fortification, and every branch of military science relating thereto, with the French and Latin languages, writing, fencing, and drawing. They are under the immediate direction of a governor, lieutenant governor, and masters in each respective branch of literature.

The models of fortification preserved in this seminary are spoken of in high terms of commendation; and it is no small advantage to the students, that they are placed near the *Warren*, where artillery of all kinds and dimensions are cast, and frequently proved before the principal engineers and officers of the board of ordnance, at which many of the nobility and gentry often attend. The gunpowder purchased by contract is here proved, as to its strength and goodness. Here is also a laboratory, where the matrosses are employed in the composition of fire works and cartridges, and in charging bombs, carcasses, grenades, &c. for public service.

COLLEGE AT HIGH WYCOMBE AND MARLOW. This establishment (for, although locally divided, it is but one) owes its origin to Major General Le Marchant, who began it in 1799. In 1801, his majesty, looking beyond the mere occasions of the day, and contemplating the absolute necessity there was, in the present state of Europe, for a school in Great Britain, where a certain number of young persons might be regularly trained up in military science, informed parliament, by a message, that such an establishment had been formed under his direction; and considering that it must conduce to the improvement of that skill and discipline, which, combined with the valour of the British troops, had so often maintained the rights, and asserted the honour of the nation, he recommended to the commons, the making of an adequate provision, for enabling him to accomplish an object of such great national importance. The message being referred to a committee, Mr. Yorke, secretary at war, explained

plained the plan in the following terms: " The proposition
 " applies to the institution of a royal college or seminary for
 " military instruction, comprehending as well the education of
 " such young men as are from early life intended for the army,
 " in the rudiments of military science, previous to their attain-
 " ing the age which enables them to hold a commission, as the
 " perfecting and forming a certain number of officers of matu-
 " rer years, and riper experience in the more arduous, difficult,
 " and important duties of their profession; I mean those which
 " belong to the general staff of the army, and in particular to
 " the quarter-master general's department in the field. It is
 " intended to consist of a senior, and a junior department;
 " the first and most important of which will be occupied in
 " the education of officers for the staff, and will include thirty
 " officers, selected from the service, and recommended by their
 " zeal and intelligence, grounded at least in the rudiments of
 " their profession, and of an age capable of reflection. It is to
 " this class more particularly that the chief military director
 " and superintendent will devote their time, and apply their
 " personal instructions. The plan of instruction for this class
 " appears to have been conceived on the justest practical mili-
 " tary principles; adapting itself particularly to the nature of
 " ground actually under examination at the time; to the choice
 " of camps and positions; to the best mode of occupying, at-
 " tacking, or defending them with a given force; to the proper
 " combination of all the component parts of an army; to its
 " movements from place to place, either in advancing or retreat-
 " ing; and among other essential acquirements, to the most
 " ready and effectual means of affording assistance to the com-
 " manding general, in making his dispositions, by military plans
 " rapidly designed, by the habitual accuracy of the eye, cor-
 " rected by the scientific preparation and judgment of the mind.
 " This plan of instruction, so described in its nature and de-
 " tails, has been already acted upon, and brought to maturity,
 " by the very able and skilful general officer, whose services in
 " this line this country has at present the advantage of possessing;
 " (I mean general Jarry;) first in the Prussian service, under the
 " inspection, and with the approbation of Frederick the Great;
 " and latterly in this country, at High Wycombe, (with the
 " assistance of a very able and intelligent officer of our own,
 " colonel Le Marchant), though on a very limited scale, in a
 " manner the most useful and advantageous to the service. I
 " must also observe, that this institution is nearly of the same
 " sort and description, with that which is now in use, for the
 " formation of staff-officers, in the Austrian, Prussian, and
 " French armies; and that it has the advantages of having
 " been

“ been examined and recommended by his royal highness the commander in chief, assisted by the quarter-master and adjutant-generals, and by a board of general officers of the highest reputation in the British army.”

“ The second, or junior department, is intended to receive 300 young men, from the age of fourteen to sixteen; 100, the sons of noblemen and gentlemen intended for the profession of arms; 50, cadets of the East India company; 100, the sons of officers actually in his majesty’s service; and 50, the sons of officers who have died or been disabled in the service, leaving families in distressed circumstances. For these, masters and professors of all the arts, sciences, and accomplishments relating to the military profession will be provided. It is further proposed, that as the establishment is intended to be entirely of a military nature, it shall be governed and regulated as a military body, by the rules and ordinances prescribed for the discipline of his majesty’s service; with such additional regulations and restrictions as may be found necessary for the conduct of youth, and the good order of the institution.”

On the plan thus ably and clearly delineated, and which met the approbation of all parties in parliament, an united establishment composed of two branches has proceeded; the senior department being continued at High Wycombe, the junior at Great Marlow; but it is intended to remove both, when the building about to be erected for their reception at Sandhurst, in Berkshire, shall be completed.

The regulation of this establishment is confided to commissioners who are all general officers, and at their head the commander in chief; and there are a governor, and a lieutenant governor: both the departments have proper officers, and the most exact discipline is observed. All necessities are supplied by contracts entered into in pursuance of a public advertisement.

CHARITABLE ESTABLISHMENTS. Of foundations formed by private benevolence, for the relief and comfort of maimed and superannuated soldier, it is not intended here to treat; but two great national establishments demand attention.

CHELSEA HOSPITAL. This receptacle for soldiers no longer able to exert themselves in the service of their country, is generally called by the softer name of Chelsea College, and, in fact, its first institution corresponded with that title. Toward the beginning of the seventeenth century, Dr. Sutcliffe, dean of Exeter, set on foot a project for establishing a college of polemical divines, to be employed in opposing the doctrines of papists and sectaries. At first the undertaking seemed attended with good

good omens; prince Henry was a zealous friend to it; the king consented to be deemed the founder, called the college after his own name, endowed it with the reversion of certain lands at Chelsea, which were fixed upon for its site, laid the first stone of the building, gave timber out of Windsor Forest, issued his royal letters to encourage his subjects throughout the kingdom to contribute towards the completion of the structure, and as a permanent endowment, procured an act of parliament to enable the college to raise an annual rent, by supplying the city of London with water from the river Lee. Under these encouraging circumstances the building was begun and carried to a considerable extent; but although Dr. Sutcliffe's will would have added considerably to its resources had the work not been interrupted, it was soon at a stand for want of supplies. With a limited establishment, and in frequent danger of being applied to purposes widely different from those originally intended, the college subsisted till the murder of Charles I.; during the interregnum it was used for various purposes, some of them so disgraceful that it would appear as if the triumphant sectaries wreaked on it some portion of the spleen excited in their minds by the intentions of those who had founded it. After the restoration it was once a prison for Dutch seamen; afterward it was granted to the Royal Society, but it was re-purchased for the crown by Sir Stephen Fox, and a plan suggested, it is said by him, was immediately carried into effect for erecting an hospital for maimed and superannuated soldiers*. In March, 1682, the king went to Chelsea, attended by many of the nobility, to lay the first stone of a fabric, which promises to be a monument of national honour to far distant ages. Sir Christopher Wren was the architect of the new structure, which was not completed till the year 1690: the whole charge of it was computed at 150,000*l*. Sir Stephen Fox contributed largely towards the building, and archbishop Sancroft gave 1000*l*.

This noble edifice is situated about a mile westward from St. James's Park, at a small distance from the northern bank of the river Thames. The approach to the north front from the road, is through a handsome gate-way, opening into a spacious court divided into avenues, and planted with lime and horse chestnut trees. The whole building is of brick, excepting the pillars, pediments, coins and cornices, which are of freestone.

* A tradition prevails at Chelsea, that the famous Nell Gwyn first projected the scheme of building an hospital for superannuated soldiers, and persuaded the king to become the founder. The sign board of a public house, not far from the college, is still decorated with her portrait, underneath which is an inscription, ascribing the foundation to her desire. Whether this celebrated lady has any claim to dispute the palm with Sir Stephen Fox, it would be difficult perhaps to determine.

It consists of three quadrangular courts, the largest of which is in the centre, and is open to the south, as the two side courts are to the east and west. The south front, which extends 790 feet, is composed of a principal building, and two inferior wings. In the centre, under a pediment supported by four three-quarter Doric columns, and crowned by a turret surmounted by a vane, is the grand entrance, which leads through a large octagonal vestibule into the principal court, in the centre of which is placed a pedestrian statue in bronze, of the founder, Charles II. in a Roman habit, the gift of Mr. Tobias Rustat. The vestibule communicates on the right with the great hall, and on the left with the chapel. At the upper or west end of the hall, which is the dining room of the pensioners, is a large painting of Charles II. on horseback, designed by Verrio, and finished by Henry Cooke, the gift of Richard earl of Ranelagh, paymaster general of the forces. The chapel has few decorations; it is paved with black and white marble, and wainscotted with Dutch oak. The altar-piece, by Sebastian Ricci, represents the ascension of our Saviour. The service of gilt plate, consisting of a pair of massy candlesticks, several large chalices and flagons, and a perforated spoon, was given by James II. and the organ by major Ingram. The centre of the south front is distinguished by a handsome Doric portico, on each side of which is a colonnade, continued to the wings, bearing the following inscription on the frieze: "*In subsidium et levamen, emeritorum senio, belloque, fractorum, condidit Carolus Secundus, auxit Jacobus Secundus, perfecere Gulielmus et Maria, rex et regina, 1690.*" The two wings which project from the south front, are each 365 feet in length, and separate the principal from the two inferior courts. They are chiefly occupied by the pensioners' wards; but the ends next the garden contain the residence of the governor, and principal officers of the hospital. The centre of each wing is decorated by a pediment, supported by four Doric pilasters. In the governor's house is the state room, a fine apartment, in which are portraits of Charles I. and II. William and Mary, George II. their present majesties, and others. The buildings on the north and south quadrangles consist of offices, apartments for the inferior officers, and the infirmaries, which are well supplied with cold, hot, and vapour baths. The garden is separated from the hospital by a handsome balustrade, and extends to the river, where it is terminated by iron gates leading to a descent of stone steps, between two square brick pavilions, ornamented with stone coins. It is very neatly laid out in the Dutch taste, in regular walks, with two canals bordered with rows of clipped trees, after the prevailing mode of the times when the hospital was built. There is a very fine walk,
from

from the water gate to the creek, at the west end, planted with a row of lofty trees, that affords a delightful view of the river Thames and its opposite bank. From the garden, the south front of the hospital appears to great advantage. A little to the east of the buildings is a spacious cemetery, wherein may be found some interesting memorials of the longevity of British veterans. The whole extent of these premises contains about 50 acres.

The establishment consists of a governor, with a salary, besides other advantages, of 500*l.*; a lieutenant governor, with 400*l.*; a major, who has 250*l.*; an adjutant, 100*l.*; two chaplains, who have 100*l.* each; an organist, a physician, surgeon, apothecary, secretary, steward, treasurer, comptroller, clerk of the works, and various subordinate officers. The number of ordinary pensioners is 336; these men must have been twenty years in his majesty's service; such as have been maimed or disabled may be admitted at any period; but except under very particular circumstances, no person is received into the house under sixty years of age; by which means the benefit of the charity is appropriated with much greater certainty to those who are its most proper objects. The pensioners who live in the house, commonly called the in-pensioners, are provided with clothes, (an uniform of red lined with blue) lodging, and diet; beside which they have an allowance of eight-pence per week; they mount guard, and perform other garrison duty; and are divided into eight companies, each of which has its proper complement of officers, serjeants, corporals, and drummers. The officers who have the nominal rank of captain, lieutenant, and ensign, are chosen from the most meritorious old serjeants in the army, and have an allowance of three shillings and sixpence per week; the serjeants two shillings; the corporals and drummers tenpence. Two serjeants, four corporals, and fifty-two of the most able privates, are appointed by the king's sign manual, to act as a patrol on the road from Chelsea to Picnic, for which duty they have an additional allowance. The actual patrol consists of half the number here mentioned, the duty being taken alternately. There is likewise in the college a small corps called the light-horsemen, thirty-four in number, who are allowed two shillings per week, and are chosen indiscriminately out of any of the regiments of cavalry. The various servants of the college, among whom are twenty-six nurses, make the whole number of its inhabitants about five hundred and fifty. There are also belonging to the establishment, four hundred serjeants who are out-pensioners. The number of private out-pensioners is unlimited; and has been much increased since the commencement of the militia system; they are dispersed all over the united

kingdom, at their various occupations, being liable to be called on to perform garrison duty, as invalid companies, in time of war. There are three degrees of out-pensioners; the first having annually 18*l.* 5*s.*; the second, 13*l.* 13*s.* 9*d.*; and the third, 7*l.* 12*s.* 6*d.* The expences of this noble institution (excepting about 7000*l.* which arises from the poundage of the household troops, and is applied towards the payment of the out-pensioners) are defrayed by an annual sum voted by parliament. The yearly expence of the house establishment, including the salaries of the officers, repairs, and other incidental charges, varies from 25,000*l.* to 28,000*l.* The internal affairs of the hospital are regulated by commissioners appointed by the crown, and consisting of the governor, lieutenant governor, and some of the principal officers of state, who hold a board, as occasion requires, for the paying of out-pensioners, and other business.

The following are the chief benefactions by which private individuals have endeavoured to extend the sphere of this useful charity. In 1695, the earl of Ranelagh vested 3250*l.* in trustees for the use of the hospital, to be disposed of as he should afterward appoint; and by a deed poll, dated 1707, he directed that the interest should be laid out, in purchasing great coats for the pensioners, once in three years; a mode of distribution which was confirmed by a degree in chancery. In 1706, John Delafontaine, Esq. bequeathed the sum of 2000*l.* for the use of the hospital, subject to the direction of the governor and treasurer. Some time afterwards, 800*l.* having in the mean while accrued for interest, the whole was laid out by order of the court of chancery in the purchase of bank annuities. Out of this benefaction the sum of 60*l.* 10*s.* is distributed among the pensioners annually on the 29th of May. In 1729, lady Catherine Jones, (daughter of the earl of Ranelagh), lady Elizabeth Hastings, Lady Anne Coventry, and other benevolent persons, founded a school at Chelsea for the education of poor girls, whose fathers were, or had been pensioners in the college. The funds of this school, arising from an endowment of 14*l.* per annum paid out of the estates of Lady Elizabeth Hastings, and the interest of 1262*l.* 15*s.* 3 per cent. consols, are vested in three trustees, who are enabled to clothe and educate twenty girls.

MILITARY ASYLUM. An establishment under the name of a military asylum, had some time been established at Chelsea, for the reception and education of 500 children of soldiers, when in 1801, parliament granted, on the motion of Mr. Yorke, the necessary supplies for extending the benefits of the institution to 1000 children, and it was provided that the whole expence should

should be defrayed by the public, without raising any part of it by deduction from the pay of the military.

MUTINY ACT. To keep the troops in order, an annual act of parliament passes, "to punish mutiny and desertion, and for the better payment of the army and their quarters." This act, which has frequently been mentioned and alluded to in preceding pages, regulates the manner in which they are to be dispersed among the several innkeepers and victuallers throughout the kingdom; and establishes a law martial for their government: by this, among other things, it is enacted, that if any officer or soldier shall excite, or join any mutiny, or knowing of it shall not give notice to the commanding officer; or shall desert or enlist in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or enemy, or strike or use violence to his superior officer, or shall disobey his lawful commands: such offender shall suffer punishment as a court martial shall inflict, though it extend even to death.

REGULATIONS RESPECTING DESERTERS. When a person is apprehended on suspicion of being a deserter, the station of the corps to which he belongs must be officially resorted to: if the party accused is taken up in Ireland, and belongs to a regiment there, the war-office in Dublin makes the necessary inquiry at the head-quarters of the regiment: but if the corps is in Great Britain, or abroad, and the apprehension happens in Ireland, the particulars are sent from Dublin to the secretary at war in London, who investigates the case, and communicates the result to the Irish war office. The like proceedings are had, when persons charged with desertion from regiments in Ireland are apprehended in Great Britain; and the removal under escort, or release of the person accused, depends upon the issue of those proceedings, and the orders are given accordingly, by the war-office in London or in Dublin.

Inspection. In order to avoid unnecessary expenses, when a deserter under escort arrives at any place in the united kingdom, where a staff surgeon is stationed, he there undergoes a medical examination; and, if found unfit, either from age or infirmity, an immediate report is transmitted by the commanding officer to the secretary at war, who (in Great Britain, with the concurrence of the commander in chief, and in Ireland, with that of the commander of the forces there) causes the man to be dismissed; unless in particular cases, where circumstances appear to make it advisable, for the sake of discipline, to forward men, even of this description, to the head-quarters of their respective corps. Each man so dismissed is to have a reasonable proportion of pay to carry him back to his last place of residence, at the rate of sixpence per day, and such additional

allowance as may be made for deserters in confinement by any special regulation then in force: the pay and extra allowance, if any, to be charged on the back of the route, to which is to be annexed a certificate from the commanding officer, that the man has been dismissed by order.

Escort. When an order is received by the commanding officer of any corps, or detachment, for a party to take charge of a deserter, and convey him to any place, he advances so much money on account of pay for the deserter, as is sufficient to defray his arrears, during the time of his confinement, and the expense, if any, of medicines and attendance. He likewise causes such necessaries as the man may stand in need of to be provided and paid for, which are not to exceed one shirt, one pair of shoes, and one pair of stockings; the sums so defrayed, and advanced, must appear dutifully on the back of the route, as likewise the particular and actual charge of the necessaries, signed by the commanding officer himself, or by the adjutant or paymaster, by his direction. The commanding officer also causes to be advanced a further sum, sufficient to subsist the deserter to the next quarter on the road; on arrival at which, the officer commanding there repays the non-commissioned officer of the escort the money disbursed at the first quarter, and so much of the sum advanced for subsistence, as appears expended, and properly accounted for on the route; and also advances the sum necessary to subsist the deserter to the next quarter on his route; the total of the sum disbursed at the second quarter, and so much of the sum advanced there for subsistence, as appears expended, and properly accounted for on the route, are in like manner repaid by the officer commanding at the third quarter; and so on, from quarter to quarter, until the deserter arrives at his final destination.

The jailor, and the non-commissioned officer who takes charge of the deserter, must likewise sign to the sums respectively received by them.

When a deserter is delivered over from one party to another, the commanding officer of the corps, to which the latter party belongs, or the adjutant or paymaster, by his direction, must carefully inspect the route, and see that the money received is there properly accounted for; if upon such inspection of the route, any improper charges are found, they are crossed out, and the amount only of what had been advanced, exclusive of such improper charges, returned by the regiment receiving the deserter; the non-commissioned officer under whom such improper charges were incurred, is required by his commanding officer to make good the amount, and on failure is to be put under stoppages.

No pay can be advanced, nor necessaries provided, but by order of the commanding officer, adjutant, or paymaster, who signs the charge; and no more pay will be advanced than the time and distance may require. At those stations where the escort is relieved by a detachment under the command of a quarter-master, or of a non-commissioned officer, such officer is to sign for the expenditure; who, in that case, is to subjoin to his signature, the following words; *No superior officer at the station.*

Necessaries are supplied but once for any march; if destroyed, or made away with, the officer commanding at the next quarter must order a detachment court martial to try the prisoner, non-commissioned officer, or any of the escort who appear to be in fault, in order that an immediate example may be made of the offender; after which, should the punishment inflicted render him unable to proceed, the same must be reported; in Great Britain, to the commander in chief; and in Ireland, to the commander of the forces.

No horse or carriage hire is allowed, except in case of a deserter being taken so ill between one stage and another, as to be incapable of proceeding on foot; on such occurrence happening, the necessity that occasioned the extra charge must be certified on the back of the route by the commanding officer, and a surgeon at the next town; and should the deserter still be unable to proceed on foot, a report is to be made to the war-office for further instructions.

No fees are allowed at jails; the mutiny act having expressly provided for the admission of deserters on the road, as at the places where they are first committed; therefore all non-commissioned officers, commanding escorts with deserters, endeavour, as much as possible, to march in such a manner as to lie in towns or villages having public places of confinement, or where troops are stationed, as they must otherwise be responsible for the security of the deserters in their own quarters.

Expense. The agent of the regiment to which a deserter belongs, or the paymaster, repays the money advanced, as above mentioned, provided it is properly accounted for on the route, and charges the same against the public; if in regular regiments, as recruiting disbursements, under the following heads, *viz.* the subsistence at 6d. per day for each deserter, whether from the cavalry or the infantry, during the period of his confinement, and on the march; the extra allowance for the same time liable to variation or discontinuance, according to the price of provisions; necessaries not exceeding the limits prescribed by the instructions; and handcuffs; medicines, and other necessary expences in consequence of sickness;

subject to the approval of the inspector of regimental hospitals.

The deserter is not to be replaced on the strength of his regiment, until the day he joins it.

The route by which deserters are marched must, in no case, include men belonging to different regiments. Each route is to be carefully preserved, and deposited with the agent or paymaster, who reimburses the expenses, in order to its being transmitted with their public accounts, as vouchers for the charges.

NAVY AND ARMY.

It was stated that besides the peculiar circumstances characteristic of each service, there were some common to both, which it would be proper to include in one division. These particulars relate principally to offences and benefits.

VAGRANCY. The law was formerly very severe against idle soldiers and mariners wandering about the realm, or persons pretending so to be, and abusing the name of that honourable profession. Such a person not having a testimonial, or pass, from a justice of the peace, limiting the time of his passage; or exceeding the time limited by fourteen days, unless he fell sick; or forging such testimonial; was by statute 39 Eliz. c. 17, made guilty of felony without benefit of clergy. This sanguinary law, which though in practice deservedly antiquated, long remained a disgrace to the statute book, was yet attended with this mitigation, that the offender might be delivered, if any honest freeholder or other person of substance would take him into his service, and he remained in the same for one year; unless licensed to depart by his employer, who in such case was to forfeit ten pounds. By the effect of subsequent acts of parliament, soldiers and mariners in this predicament are put on the same footing with other vagrants, but with some special exceptions in their favour; for every soldier, marine, or sailor, on carrying his discharge within three days, to the nearest magistrate, may receive a certificate of his place of settlement, on production of which, being in his route, he is not to be deemed a vagabond for asking relief. But this certificate can only be made use of in the direct route of the possessor, from the place where it was given, to that of his legal settlement; and it must contain a fixed time for its expiration, not exceeding the rate of ten days for every one hundred miles, and must express the sums of money, if any, which were paid to the party when it was given: wives of non-commissioned officers or soldiers gone abroad, on making proof of not being permitted

permitted to embark with their husbands, receive from the nearest chief magistrate a like certificate of their place of settlement, which entitles them to ask for relief while in their route, and such persons asking relief, with the limitations before expressed, are not subject to the laws against vagrants. In case of accident or sickness duly proved, which shall prevent the person having such certificate from proceeding on his or her journey, according to the terms prescribed, the chief magistrate of any other city, town, port, or corporate place where such person shall be or arrive, may grant a new certificate, stating the true reasons for granting it, and containing the like provisions with the former, to which it is to be annexed. Certificates or passes granted as usual from the office of admiralty or war-office to discharged sailors, soldiers, or marines, or to the families of sailors, soldiers, or marines, serving abroad, or lately deceased, to carry them to their respective homes, have the same effect and force as the certificates of magistrates, and may be, according to circumstances, renewed or extended by them.

DESERTION. To what has already been said on this subject it may be proper to add, that desertion from the king's armies in time of war, whether by land or sea, in England, or in parts beyond the seas, is by the standing laws of the land (exclusive of the annual acts of parliament to punish mutiny and desertion,) and particularly by statute 18 Hen. VI. c. 19. and 5 Eliz. c. 5. made felony, but not without benefit of clergy. But by the statute 2 and 3 Edw. VI. c. 2. clergy is taken away from such deserters, and the offence is made triable by the justices of every shire. The same statutes punish other inferior military offences with fine, imprisonment, and other penalties.

COURTS MARTIAL. For the investigation and punishment of every kind of offence committed by persons serving in the army or navy, while on actual duty, the tribunal called a court-martial is established. The origin of these courts is said to be found in the court of chivalry, but perhaps it may be with less hazard of error ascribed to the necessity of speedy judgment, and peremptory regulation, in a state where force must be exercised with unhesitating unanimity, where general deliberation cannot exist without common ruin, and where mutual confidence and good opinion must be preserved by the most rigid adherence to the laws of honour and rules of propriety. Therefore, although the law of the land punishes mutiny and desertion as already has been mentioned, still the nature of military service will not admit of the delays and formalities which would be necessary in appealing to ordinary courts; although most of the crimes of which the court-martial takes cognizance would

be punished by a jury, yet the delinquent must rather escape with impunity, than the public service be delayed by the necessary absence of parties and witnesses from a ship or a regiment; and although most misdemeanors would render the person offending amenable to a civil tribunal, yet it is found inconsistent with the high and ardent sensibility which is the very life of honourable service, that pecuniary compensation should be sought, when an appeal to the opinion of those who are equally interested with the person who complains in the maintenance of his honour, will be productive of a more satisfactory and not less just determination. It was not, however, till the reign of Charles II. that a regular court for the administration of martial law in the army or navy, was established: but the decline of the court of chivalry, to which such cases might have been referred, then rendered the measure necessary, and the system has been pursued with various improvements to the present time. It is observed that in the naval articles, contained in the act 22 Geo. II. almost every possible offence is set down, and the punishment annexed; in which respect the seamen have much the advantage over their brethren in the land service, whose articles of war are not enacted by parliament, but framed from time to time, at the pleasure of the crown; which, with regard to military offences, has a sole, and almost absolute legislative power. For, by the mutiny act, his majesty may form, make, and establish articles of war, and constitute courts-martial, with power to try any crime by such articles, and inflict penalties by sentence or judgment of the same; which articles must be judicially taken notice of by all judges, and in all courts whatever; but it is at the same time provided, "that no officer or soldier shall, by such articles of war, be subjected to any punishment extending to life or limb, for any crime which is not expressed to be so punishable by the mutiny act." This, Sir William Blackstone observes, is a vast and important trust; an unlimited power to create crimes, and annex to them any punishments, not extending to life or limb! It cannot however escape the reader's observation, that the annual consent of parliament is requisite to pass the mutiny act, and that consequently no permanent evil can result from the exercise of royal authority.

A power is given to the lords of the admiralty over the marines, by an annual act passed "for the regulation of his majesty's marine forces while on shore," similar to that given to the crown by the annual mutiny act. And officers of marines may be associated with officers of the land forces, for the purpose of holding courts-martial, as often as it shall be expedient, and particularly in certain cases, wherein the marine forces may

be interested; taking rank according to the seniority of their commissions in either service. The king is likewise empowered by parliament to frame and establish articles of war, for the regulation and government of the troops in the service of the East India Company; and it is declared, by the mutiny act, that, as often as there may be occasion, officers of his majesty's land forces and those in the East India Company's service may sit in conjunction at courts-martial, and proceed on the trial of any officer or soldier, as if such court were composed of officers of either service only; and on the trial of any officer or soldier belonging to the East India Company, regard must be had to the regulations made in 27th year of George II. for punishing mutiny and desertion of officers and soldiers in that service. By these tribunals also may be tried artillery officers, and those serving in the royal corps of engineers, and persons serving and hired to be employed in them, officers and persons serving in the corps of royal military artificers and labourers, master gunners and gunners under the ordnance, and in the corps of royal engineers, and officers and persons serving in the corps of royal military surveyors and draftsmen. For differences arising among themselves, or in matters relating solely to their own corps, the courts martial on persons belonging to the artillery may be composed of their own officers; but where a sufficient number cannot be assembled, or in matters wherein other corps are interested, the officers of artillery sit in courts martial with the officers of other corps, taking rank according to the dates of their respective commissions. All troops raised in any of the British provinces of America, by authority of the governors or governments, are, while acting in conjunction with his majesty's British forces, under the command of an officer having a commission immediately from his majesty, liable to martial law and discipline, like other troops, and subject to the same trials and punishments by courts-martial. The subjection of the militia to military law has already been mentioned, and its extension to volunteer and yeomanry corps, while in actual service; and the courts-martial on each must be composed of officers of their own class; that is, an offender in the militia must be tried by the militia, and not by regular or volunteer officers; and so in every case.

EXTENT OF MILITARY LAW. Military law, as exercised by the authority of parliament, and the mutiny act annually pulled together with the articles of war framed by his majesty, and the printed regulations from time to time issued for the regulation of his majesty's troops, has often been confounded by able lawyers and writers, with a different branch of the royal prerogative, denominated *martial law*, and which is only resorted

ed to on an emergency of invasion, rebellion, or insurrection. The distinction was ably defined by the late Earl of Rosslyn, while lord chief justice of the common pleas, in the case of serjeant Grant, who moved for a prohibition against the sentence of a general court-martial, by which he was adjudged to receive a thousand lashes, for the being instrumental in insisting, for the service of the East India Company, two drummers, knowing them to belong to the foot guards. His lordship, in delivering the opinion of the court, said, “ Martial law, such as “ it is described by Hale, and such also as it is marked by Sir “ William Blackstone, does not exist in England at all. Where “ martial law is established, and prevails in any country, it is “ of a totally different nature from that which, by inaccuracy, “ is called martial law, merely because the decision is by a court- “ martial; but which bears no affinity to that which was for- “ merly attempted to be exercised in this kingdom, which was “ contrary to the constitution, and has been for a century “ totally exploded. Where martial law prevails, the authority “ under which it is exercised claims a jurisdiction over all “ military persons, in all circumstances: even their debts are “ subject to inquiry, by a military authority. Every species “ of offence, committed by any person who appertains to the “ army, is tried not by a civil judicature, but by the judicature “ of the regiment or corps to which he belongs. It extends “ also to a great variety of cases, not relating to the discipline “ of the army in those states which subsist by military power. “ Plots against the sovereign, intelligence to the enemy, and “ the like, are all considered as cases within the cognizance of the “ military authority. In the reign of king William, there was “ a conspiracy against his person in Holland; and the persons “ guilty of that conspiracy were tried by a council of officers. “ There was also a conspiracy against his person in England; “ but the conspirators were tried by the common law. Within “ a very recent period, the incendiaries, attempting to set fire “ to the docks at Portsmouth, were tried by the common law. “ In this country, the delinquencies of soldiers are not triable, “ as in most countries in Europe, by martial law: but where “ there are ordinary offences against the civil peace, they are “ tried by the common law courts. Therefore, it is totally “ inaccurate, to state martial law as having any place whatever “ within the realm of Great Britain. But there is, by the pro- “ vidence and wisdom of the legislature, an army established in “ this country, of which it is necessary to keep up the establish- “ ment. The army being fixed by the authority of the legis- “ lature, it is an indispensable requisite of that establishment, “ that there should be order and discipline kept up in it; and “ that

" that persons who compose the army, for all offences in their mili-
 " tary capacity, should be subject to a trial by their officers.
 " This has induced the absolute necessity of a mutiny act ac-
 " companying the army. It has happened indeed, at different
 " periods of the government, that there has been a strong op-
 " position to the establishment of the army; but the army
 " being established and voted, that led to the establishment of
 " a mutiny act. It is one object of that act to provide for the
 " army; but there is a much greater cause for the existence
 " of a mutiny act, and that is, the preservation of the peace
 " and safety of the kingdom; for there is nothing so dangerous
 " to the civil establishment of a state, as a licentious and un-
 " disciplined army. The object of the mutiny act, therefore,
 " is, to create a court invested with authority to try those who
 " are a part of the army, in all their different descriptions of
 " officers and soldiers; and the object of the trial is limited
 " to breaches of military duty. Even, by that extensive power
 " granted by the legislature to his majesty, to make articles
 " of war, those articles are to be ' for the better government
 " of his forces;' and they can extend no further than they
 " are thought necessary for the regularity and due discipline of
 " the army. Breaches of military duty are, in many instances,
 " strictly defined; they are so in all cases, where a capital
 " punishment is to be inflicted. In other instances, where
 " the degree of offence may vary exceedingly, it may be neces-
 " sary to give a discretion with regard to the punishment; and
 " in some cases, it is impossible more strictly to mark the
 " crime, than to call it a neglect of discipline."

The military law is, in fact, subordinate to the civil and
 municipal laws of the kingdom, and does not in any way super-
 sede those laws, but they materially aid and co-operate with
 each other for the good order and discipline of the army in par-
 ticular, and for the benefit of the community in general. Thus
 it is declared by the mutiny act, that " nothing in that statute
 " shall extend, or be construed to exempt any officer or soldier
 " whatsoever, from being proceeded against by the ordinary
 " course of law." And that if any officer, soldier, &c. shall
 be accused of any capital crime, or any offence against the per-
 son, estate or property, of any of his majesty's subjects, which
 is punishable by the known laws of the land, the commanding
 officers of all regiments, troops, or parties, are required to use
 their utmost endeavour to deliver over such accused person to
 the civil magistrate, and to assist the officers of justice in
 apprehending such offender; and this, under the penalty of
 being *ipso facto* cashiered, and declared incapable of holding
 any civil or military office, within the united kingdom of Great
 Britain

Britain and Ireland, or in his majesty's service. But this sentence is not put in execution till the conviction has been affirmed at the following quarter session, and a certificate transmitted to the judge advocate in London, or Dublin, according to the country where it took place; and the judge advocate is to certify the fact to the next general court martial, which court is by the articles of war bound to cashier the offender. Martial law is proclaimed by authority of parliament, and prevails generally or partially in a kingdom for a limited time. The authority under which martial law is exercised, when it prevails in its full extent, claims a jurisdiction in summary trials by courts martial, not only over all military persons in all circumstances; but it also extends to a great variety of cases, not relating to the discipline of the army, but relative to that state which subsists by military power; as plots against the sovereign; intelligence to the enemy; which are all considered as cases within the cognizance of the military authority. The statute, for putting in execution martial law, usually gives a power to arrest or detain in custody, all suspected persons, and to cause them to be brought to trial in a summary manner by courts martial, and to execute the sentence of all such courts, whether of death or otherwise; and declares, moreover, that no act done in consequence of those powers shall be questioned in any of the king's ordinary courts of law; and that all who act under the authority of such statute, shall be responsible for their conduct in the same only to such courts martial.

By section 26 of the mutiny act it is provided, that no officer or soldier shall, by the articles of war, be subjected to any punishment extending to life or limb, for any crime which is not expressed to be so punishable by that act, nor for such crimes as are expressed to be so punishable in any manner, or under any regulations which shall not accord with the provisions of the act. But his majesty having the power at all times, to make and issue regulations for the army, those regulations embrace all the inferior offences for which a court martial may inflict corresponding punishments, not extending to life or limb. That the laws may not be infringed through ignorance, it is provided that the articles of war for the navy shall be printed, and hung up, or affixed in the most conspicuous parts of every ship; and for the army, that all the rules and articles are to be read and published, once in every two months, at the head of every regiment, troop or company, mustered or to be mustered in the service.

CRIMES COGNIZABLE. The crimes cognizable by naval or military courts martial; may be divided into felonies and misdemeanors; or, more properly, into capital offences, and offences only

only criminal and not capital. Those which are comprehended and specified in the naval as well as military articles of war, may, for the sake of perspicuity, be classed under the following general heads: 1st, Those that are immediately against God and religion: 2dly, Such as affect the executive power of the state, or infer a criminal neglect of the established articles and rules of discipline, in his majesty's service. 3dly, Such as violate or transgress the rights and duties, which are owing to individuals: and 4thly, Offences in themselves strictly military, and such as are peculiarly the object of martial law.

1st. *Against God and Religion.* In this division are classed the offences contained in the first and second of the naval articles, viz. neglecting public worship, and being guilty of profane oaths, cursing, execrations, drunkenness, uncleanness, or other scandalous actions; the punishment of which is left to the discretion of the court martial. And although the higher offence of blasphemy is not particularised in these articles, yet it is unquestionably implied, by the words profane oaths, cursings, and execrations. By the military code, all officers and soldiers, not having just impediment, shall diligently frequent divine service, and sermon, in the places appointed for the assembling of the regiment, troop, or company to which they belong; such as wilfully absent themselves, or being present behave indecently or irreverently, shall if commissioned officers, be brought before a court martial, there to be publicly and severely reprimanded by the president; if non-commissioned officers or soldiers, every person so offending, shall for his first offence forfeit twelve-pence, to be deducted out of his next pay; for his second offence he shall not only forfeit twelve-pence, but be laid in irons for twelve hours; and for every like offence shall suffer and pay in like manner; which money so forfeited, shall be applied to the use of the sick soldiers of the troop or company to which the offender belongs. It is also ordained, "that no officer or soldier shall use any unlawful oath or execration, under the penalty expressed in the first article. Whatsoever officer, non-commissioned officer, or soldier, shall presume to speak against any known article of the Christian faith, shall be delivered over to the civil magistrate to be proceeded against according to law: whatsoever officer, non-commissioned officer, or soldier, shall profane any place dedicated to divine worship, or shall offer violence to a chaplain of the army, or to any other minister of God's word, shall be liable to such punishment, as by a general court martial shall be awarded. No chaplain who is commissioned to a regiment or garrison shall absent himself, except in case of sickness, or leave of absence, upon pain of being brought to a court martial,"

“ martial, and punished as their judgment and the circumstances of his offence may require. And whatsoever chaplain to a regiment, or garrison, shall be guilty of drunkenness, or of other scandalous or vicious behaviour, derogating from the sacred character with which he is invested, shall, upon due proof before a court martial, be discharged from his office.”

2d. *Crimes which affect the executive power of the king and his government.* In the naval code these crimes are defined in the following terms. Holding intelligence with an enemy or rebel; concealing letters or messages from, or relieving an enemy or rebel; deserting to an enemy; running away with ship's stores, or yielding the same to an enemy; desertion from the service, or entertaining deserters; waste or embezzlement of stores; mutinous assemblies; seditious or mutinous words; concealing any traitorous or mutinous designs, &c.; striking, quarrelling with, or disobeying the orders of a superior officer; sleeping upon the watch, neglecting duty, or forsaking a station allotted, and knowingly signing false muster books.

In the military articles of war they are described as follows: traitorous or disrespectful words against the king, or any of the royal family; contemptuous or disrespectful behaviour towards the general, or other commander in chief; mutiny or sedition, not endeavouring to suppress the same; or coming to the knowledge of any mutiny, or intended mutiny, and not without delay giving information thereof; striking or drawing any weapon against a superior officer, or disobeying orders; not making due musters and returns as by law directed; desertion; receiving and entertaining deserters; enlisting in another regiment, &c.; absenting from a troop or company. Provoking speeches or gestures; giving or sending a challenge; suffering any person to go forth to fight a duel; upbraiding another for refusing a challenge. Selling or embezzling military stores; and holding correspondence with, or giving intelligence to the enemy, either directly or indirectly. Many of these offences are capitally punished by the general law of the land, but the whole article is not quite so general as that of the navy, which makes no distinction between an enemy and a rebel. By the mutiny act it is ordained, that officers or soldiers, who shall mutiny, or stir up sedition, or shall desert his majesty's service, shall suffer death, or such other punishment, as a court martial shall award. It is also declared, that a non-commissioned officer or soldier, enlisted or in pay in any regiment, troop, or company, who shall, without having first obtained a regular discharge therefrom, enlist himself in any other regiment, &c. shall be deemed to have deserted his majesty's service, and shall in like manner suffer death, or such other punishment as by a court martial shall be

awarded, and may be punished as a deserter in the corps in which he had enlisted. Accessaries to this offence are deemed almost equally guilty with the principals, it being declared that in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him, and give notice thereof to the corps in which he last served, the officer so offending shall, on being convicted thereof before a general court martial, be cashiered. It is further enacted that, in the case of any non-commissioned officer or soldier, tried and convicted of desertion, where the court shall not think the offence deserving of capital punishment, they may, instead of awarding a corporal punishment, adjudge the offender to be transported as a felon for life, or for a certain term of years, and if he return without proper authority, before the expiration of the term limited, he shall suffer death as a felon, without benefit of clergy. The military articles of war declare, that "whatsoever officer, non-commissioned officer, or soldier, shall be convicted of having advised or persuaded any other officer or soldier to desert, shall suffer such punishment as by the sentence of a general court martial shall be awarded." By the mutiny act it is further declared, "that any person who shall knowingly detain, buy, or exchange, or otherwise receive from a soldier or deserter, or any other person, any arms, clothes, caps, or other furniture belonging to the king, or cause the colour of any such clothes to be changed; the person so offending shall, upon conviction before a justice of the peace, by the oath of one credible witness, forfeit 5*l.* to be levied by distress, and in case of no sufficient distress, he shall be committed to the common jail for three months; or be publicly whipped at the discretion of the justice." The crimes of harbouring soldiers, being deserters, purchasing their arms, clothes, caps, or other furniture belonging to the king, are punishable, in virtue of the mutiny act, either by a military or civil tribunal. If the offender be a person subject to military jurisdiction, he will of course be tried by a general court martial; but if in the civil line of life, and not amenable to martial law, the remedy and punishment are left to a civil tribunal. The offences relating to mutinous assemblies, sedition, &c. are punished by the articles of war with death, or otherwise, as a court martial shall think fit. By statute 22 Geo. II. cap. 33. sect. 19. sentences of death by naval courts martial, in cases of mutiny, may be put in execution, within the narrow seas or on foreign stations, without reporting the proceedings of the court martial, either to the lords commissioners of the admiralty, or to the commander in chief abroad, where such sentence was passed.

passed. But no sentence of death, for other crimes specified in the articles of war, can be put in execution till after report of the proceedings made to the lords of the admiralty, or to the commander of the fleet or squadron in which the sentence was passed, and their or his directions shall have been given therein. By the military articles of war it is declared, that any officer, non-commissioned officer, or soldier, who, being present at any mutiny or sedition, shall not use his utmost endeavour to suppress the same, or, coming to the knowledge of any mutiny or intended mutiny, shall not without delay give information thereof to his commanding officer, shall suffer death, or such other punishment as by a general court martial shall be awarded. The naval articles declare, that, "if any officer, mariner, soldier, or other person in the fleet, shall strike any of his superior officers, or draw, or offer to draw, or lift up any weapon against him, being in the execution of his office, on any pretence whatsoever, every such person being so convicted of any such offence, by the sentence of a court martial, shall suffer death."

3d. *Crimes which violate and transgress the rights and duties, which men owe to their fellow subjects.* Under this head may be classed murder, and robbery, rapes, and crimes against nature. There are no specific articles in the military code for the punishment by courts martial of the crime just noticed; but it is provided, that nothing contained in the mutiny act shall exempt any officer or soldier from being proceeded against by the ordinary course of law. In the naval articles 28, 29, and 30, murder and the crimes against nature are punishable with death, by sentence of a court martial, and robbery with death, or otherwise according to circumstances. Under the description of robbery may be included the illegal taking of effects out of prizes, and stripping or pillaging of persons on board them. Perhaps the true reason, for the distinction between the naval and military codes in this point, may be the different circumstances of the soldier and the sailor. The former passing the greater part of his life on shore, if he commits capital offences, generally does it so to the prejudice of his majesty's subjects, who are not included in the military code, and consequently can neither be partial, nor strictly amenable to, a military tribunal. Sailors, on the contrary, are always, when objects of a court martial, so circumstanced, that either sailors or soldiers must be the parties injured by these offences, and the decision of no other tribunal is attainable.

4th. *Offences strictly military, and as such peculiar to martial law.* In the naval code these crimes are contained in the following articles. Every flag officer, captain, and commander in
the

the fleet, who upon signal or order of fight, or sight of any ship or ships which it may be his duty to engage, or who upon likelihood of an engagement, shall not make the necessary preparations for fight, and shall not in his own person, and according to his place, encourage the inferior officers and men to fight courageously, shall suffer death, or such other punishment as from the nature and degree of the offence, a court-martial shall deem him to deserve; and if any person in the fleet shall treacherously or cowardly yield, or cry for quarter, every person so offending, and being convicted thereof by sentence of a court-martial, shall suffer death. Every person in the fleet, who shall not duly observe the orders of the admiral, flag officer, commander of any squadron, or division, or other his superior officer, for assailing, joining battle with, or making defence against any fleet, squadron, or ship; or shall not obey the orders of his superior officer as aforesaid, in time of action, to the best of his power; or shall not use all possible endeavours to put the same effectually into execution: every such person so offending, and being convicted thereof by the sentence of a court-martial, shall suffer death, or such other punishment, as from the nature and degree of the offence, the court-martial shall deem him to deserve. Every person in the fleet, who through cowardice, negligence, or disaffection, shall in time of action withdraw or keep back, or not come into the fight or engagement; or shall not do his utmost to take or destroy every ship, which it shall be his duty to engage; and to assist and relieve all, and every of his majesty's ships or those of his allies, which it shall be his duty to assist and relieve; every such person so offending, and being convicted thereof by the sentence of a court-martial, shall suffer death. Every person in the fleet who through cowardice, negligence, or disaffection, shall forbear to pursue the chase of an enemy, pirate, or rebel, beaten or flying; or shall not assist and relieve a known friend in view, to the utmost of his power, being convicted of any such offence by the sentence of a court-martial, shall suffer death. The peremptory denunciation of death in the last two cases being, however, found too severe in its operation, it was by statute 19 Geo. III. c. 17. declared lawful for a court-martial to pronounce sentence of death, or to inflict such other punishment, as the nature and degree of the offence therein recited, should be found to deserve. The other naval articles applying to this division are, if when action, or any service shall be commanded, any person in the fleet shall presume to delay or discourage the said action or service, upon pretence of arrears of wages, or upon any pretence whatsoever; every person so offending, being convicted thereof by the sentence of a court-martial, shall suffer death, or such other

punishment, as from the nature and degree of the offence, a court-martial shall deem him to deserve. The officers and seamen of all ships, appointed for convoys and guard of merchant ships, or of any other, shall diligently attend upon that charge, without delay, according to their instructions in that behalf; and whosoever shall be faulty therein, and shall not faithfully perform their duty, and defend the ships and goods in their convoy, without either diverting to other parts or occasions, or refusing or neglecting to fight in their defence if they are assailed; or running away cowardly, and submitting the ships in their convoy to peril and hazard; or shall demand or exact any money or other reward from any merchant or master, for conveying of any ships or vessels intrusted to their care, or shall misuse the masters or mariners thereof, shall be condemned to make reparation of the damage to the merchants, owners, and others, as the court of admiralty shall adjudge; and also be punished criminally according to the quality of their offences, be it by pain of death, or other punishment, as shall be adjudged fit by the court-martial.

The abstract of the duties and offences belonging to this division, which are contained in the military code, is as follows. The regulations relative to the sutling, and conniving at others selling provisions to soldiers at exorbitant rates, &c. Commanding officers quartering more than the number of effective men, and not redressing all abuses or disorders in quarters, garrisons, or on a march. Commanding officers to pay for carriages on the march, and not to suffer the persons attending them to be abused. Officers, non-commissioned officers, or soldiers to redress wrongs; not to embezzle military stores; waste ammunition delivered out for the service; spoil arms, accoutrements or regimental necessaries. Commissioned officers not to embezzle or misapply regimental money; and non-commissioned officers not to misapply or embezzle the pay of the men. Officers and soldiers to behave themselves orderly in quarters and on their march. Non-commissioned officers and soldiers not to absent themselves one mile from the camp; not to lie out of quarters, garrison, or camp, without leave; to retire to quarters on the beating of the retreat; repair at the time fixed to the parade of exercise, or other rendezvous; not to quit guard before regular dismissal. Also the following offences; hiring another to do his duty. Officers conniving at soldiers doing so. Officer or soldier quitting his platoon or division, without leave of his superior officer. Found drunk on guard. Centinel found sleeping on his post, or quitting it before he is relieved. Doing violence to any person, who brings provisions or other necessaries to camp, garrison, or quarters. Forcing a safeguard. Making
known

known the watch-word, or giving a false one. Making false alarms in camp or quarters. Not securing public stores taken from the enemy. Leaving post or colours in search of plunder. Casting away arms or ammunition. Misbehaving before the enemy, or shamefully abandoning or delivering up any garrison, fortress, post, or guard, committed to his charge. Compelling others to do the same. Menacing words, gestures, or disturbances, before a military court-martial. Releasing prisoners to be tried by a court-martial without proper authority. Officer breaking his arrest, or leaving his confinement; or behaving in a scandalous, infamous manner, such as is unbecoming an officer and a gentleman. Not transmitting regimental accounts agreeably to regulations.

COURTS OF INQUIRY. Although no articles of war, or acts of parliament, authorise courts of inquiry, either in the army or navy, yet, from various precedents and customs long established, they have become an essential branch of military and naval jurisdiction. They bear no slight analogy to the functions of a grand jury, as the result of their investigation is a report to the power vesting them with authority to inquire, whether or not there be sufficient grounds for bringing the person or persons, whose conduct has been the subject of inquiry, to a court-martial, in order that if judicially found guilty, a punishment corresponding to the offence may be inflicted. A court of inquiry, fairly and impartially conducted, may be regarded rather as a royal mark of lenity than severity; more particularly considering the prerogative of the crown to dismiss officers from the service, without giving them any chance of trial. The king, or any commander to whom the power of assembling courts-martial is delegated, may appoint courts of inquiry for examining the conduct of officers in the army, and the lords of the admiralty have the power of appointing courts of inquiry in the navy, as being immediately derived from the crown; but neither the king nor the admiralty have power to inflict any corporal punishment for offences, unless by sentence of a court-martial. In many instances, however, the crown has exercised its prerogative, in dismissing officers of rank from the service, even after having undergone a trial by a court-martial, and being acquitted of the charges exhibited against them. A court of inquiry, by examining the evidence produced on both sides in a summary manner, *viva voce*, avoids the procrastination incident to a court-martial, and is less inconvenient to the service, by having fewer members. Three are generally deemed sufficient, but where the matter is important it is usual to have five. No oath is administered to the members or witnesses, and many have questioned even the legality of

any witness being obliged to give testimony, or of the person, whose conduct is the subject of inquiry, being bound to plead; because it might be more favourable to reserve his case and evidence for a court capable of pronouncing definitive judgment. These courts are, however, useful in adjusting disputes between officers. These often are of such a nature that nothing criminal can be imputed to either party, so as to give jurisdiction to a court-martial; but a court of inquiry prevents much unnecessary trouble, and does not materially retard or obstruct the service.

COMPOSITION OF A NAVAL COURT-MARTIAL. By stat, 22 Geo. II. c. 33. no court martial to be held or appointed, shall consist of more than thirteen, or less than five persons, to be composed of such flag-officers, captains, or commanders present, as are next in seniority to the officer who presides at the court martial. It is also declared that the lord high admiral; or lords of the admiralty, or any officers empowered to hold courts-martial, shall not direct or ascertain the particular number of persons of which any court-martial shall consist.

OF A MILITARY COURT-MARTIAL. By the 17th section of the mutiny act (1804) it is enacted, that no general court-martial shall consist of a less number than thirteen commissioned officers except in Africa, or in New South Wales; where five will suffice, but none must be under the degree of a commissioned officer: nor can the president of any general court-martial be the commander in chief, or governor of the garrison where the offender is tried, nor under the degree of a field officer, unless where a field officer cannot be had, nor in any case whatever under the degree of a captain.

GENERAL COURTS-MARTIAL. Military courts-martial are either *general*, for the trial of crimes of magnitude; or *regimental* or *garrison* court, for the cognizance of smaller offences. A general court-martial is held either by direct authority from his majesty, under sign manual, or by a delegation of the royal authority to a general officer having the chief command of a body of force, within any particular part of the king's dominions. In the former case, the warrant for holding the general court-martial, usually contains the name of the president and all the members who compose the court; and such warrant is directed to the judge advocate general, or his deputy. In the case, where the court is assembled by a general officer commanding in chief, who has the royal authority delegated to him, an order or warrant is directed by him to the president alone: and orders are issued, by the same authority, for certain regiments to furnish each a certain quota of officers,
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of a rank therein specified, to be members of the court, and to return their names to the office of the adjutant general.

REGIMENTAL COURTS Regimental courts-martial are held by virtue of the articles of war, sect. 16. under the head of *administration of justice*; which provide that the commissioned officers of every regiment may, by the appointment of their colonel or commanding officer, without any special warrant from his majesty, hold regimental courts-martial for inquiry into such disputes or criminal matters as may come before them, and for inflicting corporal or other punishments for small offences, and shall give judgment by the majority of voices, but no sentence to be executed until confirmed by the commanding officer, not being a member of the court-martial; and it is likewise declared, that no regimental court-martial shall consist of less than five officers, except in cases where that number cannot be conveniently assembled, when three may be sufficient, who are likewise to determine upon the sentence by the majority of voices. Where a sufficient number of officers of the same corps or regiment cannot be had, the commanding officer, or the governor of the garrison, fort, castle, or barracks, may appoint officers, from different corps, to compose the regimental court martial; and the same power is given to the commanding officer in any town or place, with detachments of different corps. The usual practice of constituting a regimental court-martial, is to appoint one officer of the rank of captain as president, and the other four members, subalterns, if they can be conveniently assembled; if not, a captain and two subalterns will be sufficient to constitute the court.

DETACHMENT COURTS. By the articles of war, his majesty has laid down regulations for constituting another species of military courts, called *detachment courts-martial*. These are for trying officers not commissioned by his majesty, or by any general officers having authority to grant commissions, but appointed by warrant under the signature of the colonels or commandants of the corps to which they belong; hence they are distinguished by the appellation of warrant officers. It is thereby declared and directed, that, in all cases where the offence charged against any warrant officer may not be of so heinous a nature as to require investigation by a general court-martial, such officer may and shall be tried by a detachment court-martial, to be appointed by the general officer commanding his majesty's forces in the district where the corps shall be situated, if in Great Britain, Ireland, Jersey, Guernsey, Alderney, Sark, or Man, and if in any of his majesty's dominions beyond the seas, or in foreign parts, by the general commanding in chief on the station; which detachment courts-martial are to be held, and to proceed in the

nature of regimental courts-martial. Provided that such detachment court-martial shall not, in any case, consist of less than five commissioned officers, of whom not more than two shall be taken from the regiment, in which the warrant officer to be tried is serving; that the president of such court-martial shall not be under the degree of a field officer; that not more than two of the other members shall be under the degree of a captain; and that no sentence of such court-martial shall be put in execution, if the trial shall have taken place in Great Britain, Jersey, Guernsey, Alderney, Sark, or Man, until after a report shall have been made to his majesty, and directions shall have been signified thereupon through the commander in chief of his majesty's forces, or (in his absence) through the secretary at war; or if in Ireland, or in any of his majesty's dominions beyond the seas, or in foreign parts, until such sentence shall have been confirmed by the general officer commanding in chief on the station, who is thereby authorised to cause such sentence to be put into execution, or to suspend, mitigate, or remit the same, as he shall judge best, and most conducive to the good of his majesty's service, without waiting for further orders: Provided also, that no court-martial shall have authority by their sentence to award corporal punishment, in any case of a warrant officer; nor shall a warrant officer be liable to be reduced, by the sentence of either a general or detachment court-martial, to serve in an inferior situation, unless he shall have been originally enlisted as a private soldier, and shall have continued in the service until his appointment to be an officer by warrant.

PROCEEDINGS IN REGIMENTAL AND DETACHMENT COURTS. The members of a regimental, garrison, or detachment court-martial have not, as in trials before a general court martial, the assistance of a judge advocate, or his deputy; neither were the members or witnesses sworn, as those of a general court-martial; but, by a late act of parliament, every member composing such courts takes an oath, that he will well and truly try and determine the matter submitted, and administer justice according to the articles of war and the mutiny act, without partiality or affection. The proceedings are regularly committed to writing, either by the president, or by any of the members of the court named by him. The sentence is signed by the president alone; but at naval courts-martial, by the president and every member composing the court. As sentences of military courts-martial are not put into execution until approved of by his majesty, or the commander empowered to convene them, the court, in the event of disapproval, may be directed to revise the sentence, and reconsider the proceedings: but this power is very properly restricted; for it is declared by the mutiny act, that no sentence shall be more than once liable to a revision.

APPEAL

APPEAL FROM THEM. The articles of war have provided that any party thinking himself aggrieved by the decision of a regimental or detachment court-martial, may appeal to a general court-martial; but if, upon a second hearing, the appeal shall appear to be vexatious and groundless, the person so appealing shall be punished, at the discretion of the general court. It is understood, however, that this right of appeal only exists in cases where the original cause has been a supposed wrong sustained by some inferior, or non-commissioned officer, or private, from his superior.

OFFENCES COGNIZABLE IN EACH. The jurisdiction of each of these courts is limited to a separate class of offences, but some few crimes are liable to be tried before either court.

GENERAL COURT-MARTIAL. The offences cognizable in a general court are, profaning churches, or offering violence to chaplains. Traitorous or disrespectful words by officers. Officers behaving with disrespect to the general or commanding officer. Mutiny. Not suppressing mutiny, or countenancing it. Striking, or drawing a weapon against a superior officer. Officers signing false certificates. Officers making false musters. Commissary or muster-master taking money on a muster. Officers making false returns. Not transmitting monthly returns to the commander in chief and secretary at war. Officers entertaining, and not confining deserters. Persuading one to desert. Resisting officers in quelling frays and disorders. Officers making improper exactions from sutlers, &c.; conniving at others selling provisions at exorbitant rates; refusing or neglecting to make up accounts. Officers refusing to see justice done, if any person shall be abused or wronged by a soldier. Offences relative to carriage on the march. Crimes punishable by law. Commanding officer, storekeeper, or commissary, selling military stores without orders. Warrant officers embezzling or misapplying regimental money. Officers conniving at the hiring of duty. Sleeping upon post. Violence to any one who brings provisions to camp or quarters; punishment *death*, without any alternative. Forcing a safeguard; punishment *death*. Making known the watch-word, or giving a false one. Making false alarms in camp or quarters. Holding correspondence with an enemy. Relieving or harbouring an enemy. Going in search of plunder. Casting away arms or ammunition. Misbehaving before the enemy. Compelling others to misbehave before the enemy. Officer breaking his arrest; and a commissioned officer cannot be cashiered but by a general court-martial.

Offences cognizable by a general, or regimental, or garrison court-martial. Non-commissioned officer or soldier uttering traitorous

or disrespectful words. Soldiers absenting themselves from their troop or company. Demanding billets for quartering more men than the effective number. Non-commissioned officers or soldiers wasting ammunition, delivered out for service. Selling or spoiling arms. Non-commissioned officers embezzling money. Spoiling the property of individuals. Soldiers absenting themselves a mile from camp. Lying all night out of camp or quarters. Not retiring to quarters, at the beating of the retreat. Not repairing at the time fixed to the parade of exercise, &c. Quitting platoon or division without leave, Drunkenness.

REGIMENTAL COURTS. Regimental, garrison, and detachment courts, are regulated by separate sections in the articles of war, and are a great resource to inferiors thinking themselves aggrieved by their commanding officers. They also take cognizance of soldiers hiring their duty; and the following offences are cognizable by a court martial, without declaring whether it must be general, or may be regimental. Absenting from divine service, and irreverent behaviour. Swearing or cursing. Chaplain absenting himself from the regiment, guilty of drunkenness, or sending a challenge.

NAVAL COURTS MARTIAL. The jurisdiction of naval courts martial extends to the trial of all offences, specified in the articles of war, which may be committed on the main sea, or in great rivers only, beneath the bridges of the said rivers, nigh to the sea, or in the haven, river, or creek within the jurisdiction of the admiralty; and which shall be committed by persons then in actual service, and full pay in the fleets or ships of war of his majesty. Likewise, to the trial of all spies, and of all persons whatsoever, who shall come and be found, in the nature of spies, to bring or deliver any seducing letters or messages from any enemy or rebel, or endeavour to corrupt any captain, officer, mariner, or other in the fleet, to betray his trust, &c. as specified in the fifth article of war. The jurisdiction also extends to the trial of every person who shall be guilty of mutiny, desertion, or disobedience to any lawful commands, in any part of his majesty's dominions on shore, when in actual service, relative to the fleet, and for crimes committed on shore by such persons, in any places out of his majesty's dominions, as are more fully specified in the thirty-fourth or thirty-fifth naval articles of war. Naval courts-martial cannot take cognizance of murders, except in cases where the stroke or poison is given on board ship, and the person die in consequence thereof on board. Hence, if a seaman be stricken or wounded by another on shore, and should in consequence die on board ship, the aggressor must be delivered up to the civil magistrate of the district
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to be dealt with according to law; upon proper application being made to the commanding officer of the ship, where such wounded man died. If the stroke or wound were given on board ship or alongside, and the wounded man afterwards sent on shore, to an hospital or other place, where death ensued, the offender must also be delivered up to the civil magistrates, to take his trial at the next jail delivery for the county where such death happened. In order to prevent any failure of justice, and for taking away all doubts touching the trial of murders, in the cases herein-after mentioned, it is enacted by statute 2d Geo. II. c. 21, "that where any person shall be feloniously
 " stricken or poisoned upon the sea, or at any place out of that
 " part of Great Britain called England, and shall die of the
 " same stroke or poisoning, within that part of Great Britain
 " called England; or where any person shall be feloniously
 " stricken or poisoned at any place within that part of Great
 " Britain called England, and shall die of the same stroke or
 " poisoning upon the sea, or at any place out of that part of Great
 " Britain called England; in either case an indictment thereof,
 " found by the jurors of that part of Great Britain called Eng-
 " land, in which such stroke or poisoning shall happen respect-
 " ively as aforesaid, whether it shall be found before the cor-
 " ner upon the view of such dead body, or before the justice
 " of the peace, or other justices or commissioners, who shall
 " have authority to inquire of murders, shall be as good and
 " as effectual in law, as well against the principals, as the ac-
 " cessaries, as if such felonious stroke and death, or poisoning
 " and death thereby ensuing, and the offence of such accessories,
 " had happened in the same county where such indictment
 " shall be found, and also any superior court, in case such in-
 " dictment shall be removed, shall and may proceed upon the
 " same in all points, as they might or ought to do in case such
 " felonies, stroke and death, or poisoning and death, and the
 " offence of such accessories, had happened in the same
 " county where such indictment shall be found. And every
 " such offender shall answer upon their arraignments, and have
 " the like defences, advantages, and exceptions, (except chal-
 " lenges for the hundred,) and shall receive the like trial, judg-
 " ment, order, and execution, as if their respective offences
 " had happened in the same county where such indictment
 " shall be found." Where one standing on the shore, shot at
 another standing in the sea, who afterwards died on board a
 ship, all the judges held, that the trial must be in the admiralty
 court, and not at common law.

But courts-martial cannot take cognizance of offences com-
 mitted by masters, mates, or seamen belonging to navy transports;
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for they are persons not subject to naval discipline. They are entitled to be discharged in time of peace or war, on their own application. The articles of war, and abstract of the act of parliament, are never stuck up or read on board of navy transports; and although the officers and men receive their wages quarterly at the yards, in the same manner as the officers and men of his majesty's ships in ordinary, yet there is a broad line to be drawn between them, The standing warrant officers of ships in ordinary, *viz.* pursers, gunners, boatswains, and carpenters, are appointed by the admiralty, and the cooks by the navy board; and, as already noticed, they are amenable to courts-martial. The masters of navy transports are appointed by the navy board, and the mates are recommended by the master, and appointed by the master attendant of the dock yard, with the approbation of the board, or of the commissioners resident at the port: the seamen make application to the master attendant, who approves and certifies the same to the commissioner resident at the port; and if it likewise meet with his approbation, he signs the certificate, which is an authority to the clerk of the cheque to enter him. And they being regularly discharged in time of war or peace on their application, consequently are persons not subject to naval discipline. Naval-courts martial can also take cognizance of crimes committed by the officers and men belonging to the East India Company's ships, having letters of marque in time of war; as well as those committed by the officers and men belonging to privateers. The acts of parliament which subject to courts-martial the officers and men serving on board privateers, or merchant ships having letters of marque, enact, "that all offences, committed on board of privateers, or
 " merchant ships having letters of marque, are to be tried and
 " punished in the same manner as such offences are tried and
 " punished, when committed on board king's ships. Every of-
 " fender, however, who is accused of such crimes as are cogni-
 " zable by a court-martial, shall be confined on board the pri-
 " vateer or merchant ship having a letter of marque, until the
 " vessel arrive at some port in Great Britain, or Ireland, or
 " can meet with such a number of his majesty's ships of war
 " abroad, as are competent to constitute a court-martial. And
 " upon application made by the commander of such privateer,
 " or letter of marque, to the lord high admiral, or to the com-
 " missioners for executing that office, or to the commander in
 " chief or senior officer of his majesty's ships of war abroad,
 " the said lord high admiral, or any three or more of such com-
 " missioners, or such commander in chief, or senior officer,
 " are authorised and required to call a court-martial, for trying
 " and punishing such offences."

OF DEGRADATION IN THE NAVY. No tribunal inferior to a general court-martial can be resorted to in the navy; but a captain has the power of inflicting punishment upon a seaman in a summary manner, for any faults or offences committed contrary to the established rules of discipline and obedience. This power the framers of our naval articles and orders, wisely considered preferable to establishing inferior courts-martial for trying trivial offences, as calculated less to obstruct his majesty's service at sea, and as carrying more promptly into execution the rules and articles laid down for its regulation. In strictness, this punishment cannot exceed a dozen lashes on the bare back, with a cat-o'-nine-tails; but as one charge may involve different offences, the punishment is frequently made cumulative, as when drunkenness is attended, as it frequently must be, with disobedience of orders, and quarrelling or fighting, the offender is punished at once for the three offences. There is also a power exercised by captains and commanders, by their own authority, and merely resulting from usage, that has often been a topic of animadversion in the service, that is, the power of degrading a petty, or non-commissioned officer, to the situation of an ordinary seaman, or swabber of decks, after he may have been rated on the books master's mate, midshipman, quarter-master, corporal, gunner's mate, or boatswain's mate, &c. Although this power be not specially recognized by the articles of war, or general printed instructions, yet, it having been the usage from time immemorial for captains to exercise it, on proper occasions, with due discretion, the justice and policy of the authority may perhaps be admitted. The captain being authorized to rate his ship's company according to their capacities and merits, and for whose discipline he is responsible, it is but just, that on conferring on any one a rank which, by bad conduct or demerits, the non-commissioned officer afterwards forfeits, he that gave such rank should have the power of taking it away. During the administration of earl St. Vincent, a regulation was adopted by which the lords of the admiralty appoint a certain number of midshipmen, who are called admiralty midshipmen, and it is much doubted whether these can be degraded by the captains.

DEGRADATION IN THE ARMY. By the military articles of war, and long usage in the army, a similar power of degrading a non-commissioned officer, and reducing him to the ranks, is vested at all times in the colonel of the regiment. The 18th article of section 16th, under the head of administration of justice, declares that, "no commissioned officer shall be cashiered or dismissed from the service, excepting by an order from the king, or by the sentence of a general court-martial, ap-
 " proved

“ proved by him, or by some person having authority from under the king’s sign manual ; but non-commissioned officers may be discharged as private soldiers, and, by the order of the colonel of the regiment, or by the sentence of a regimental court-martial, be reduced to private centinels. A commanding officer of marines may also, with the sanction of the captain of the ship in which his party is embarked, degrade a serjeant or corporal for misconduct ; but in such case it will be necessary afterwards, and by the first opportunity, to assign cogent reasons to the commanding officer of the division to which the party belongs, that such degradation may be approved and confirmed.”

RULES RESPECTING COURTS-MARTIAL. All naval courts-martial are to be held, and offences tried, in the forenoon, and in the most public part of the ship, where all who will may be present ; and the captains of all his majesty’s ships in company which take post, have a right to assist thereat. In the army, courts-martial are also conducted publicly, and are not by law allowed to sit longer than seven hours a day ; and no court can be assembled before eight o’clock in the morning, or sit later than three o’clock in the afternoon, unless in cases which require an immediate example.

All complaints at sea, or in foreign parts, upon which the summoning of a court-martial is to be grounded, are made in writing to the commander in chief (unless where he of himself sees cause to call a court) ; in which are to be set forth the particular facts, with the place, time, and in what manner they were committed : and, if any captain, who is entitled by his rank to sit in the court, be personally concerned in the matter to be tried, he shall not be admitted to sit at the trial. It appears to be an established doctrine, that neither the lords commissioners of the admiralty, nor a commander in chief abroad, vested with a power of assembling courts-martial, can exercise a discretionary power in rejecting charges or articles of accusation, preferred against any officer, properly drawn up, and specifically pointed.

The commander in chief is to order the judge advocate to send, at a sufficient interval before the trial, an attested copy of the charge or accusation to the party accused, that he may prepare for his defence. The judge advocate should also inform himself of all the circumstances of the case ; and by what evidence the articles of accusation are to be proved against the prisoner. He ought to require from the prisoner a list of those witnesses, whom he wishes to be summoned in his exculpation ; and the witnesses on both sides should be summoned in due time, to give their attendance at the trial.

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The proceedings of a court-martial are not to be delayed by the absence or death of any of its members, when a sufficient number remains to compose the court; which is required to sit from day to day (Sundays excepted) until the sentence is given. And no member can absent himself from the court, during the whole course of the trial, upon pain of being cashiered; except in cases of sickness, or other extraordinary and indispensable occasion, to be judged of by the court: but as no general court-martial can consist of less than thirteen officers, unless it is held in Africa, or New South Wales, it is usual to appoint more than the required number, to guard against the death or illness of any one of them.

The members are sworn, pursuant to the form prescribed in the act, to administer justice according to the articles and orders established, without partiality, favour, or affection; and, if any case shall arise, which is not particularly mentioned in the said articles and orders, to administer justice according to their consciences, to the best of their understanding, and to the custom of the navy in the like cases. In order that the minds of the younger members may not be influenced by the opinion of their seniors, the youngest member votes first, proceeding upwards in order to the president, who votes last; and the determination of the court is settled according to the majority of voices. But, should there be an equal number of votes on each side, and the several members of the court, upon reconsidering the point at issue, adhere to the first opinion, the question remains undecided.

At all courts-martial, it is customary to have, if possible, the number of members odd, or unequal; but it may happen, by the death or sickness of a member, originally making the number of a court-martial unequal, that it might be reduced to even or equal numbers, and that there might be an equality of votes. In similar predicaments, it is the usage of army courts-martial to allow the president to have a double or casting vote, where the court is equally divided.

By the act 22d Geo. II. no member of any court-martial, after the trial commenced, could go on shore, or leave the ship, in which the court should first assemble, until sentence was given; but it was found that this restraint and confinement had been attended with great inconvenience, and prejudice to the health of the members, and it was so severely felt by those who sat on admiral Keppel's long trial, that they represented the hardship to the lords of the admiralty. And soon after, the clause of the act alluded to was repealed, and all the members are now at liberty to retire upon every adjournment.

Military courts-martial once assembled, remain in existence till

till they are dissolved by the same authority by which they are held or constituted; and although the members may have terminated the whole business brought before them at any trial, and pronounced sentence therein, yet they are not at liberty to return to their ordinary duty, or leave the place where the court is assembled, without special leave from the commander in chief, until he signify that the court is finally dissolved. This distinction is necessary in military courts-martial; as the sentence may be ordered to be revised, or the members may be directed to intimate publicly, in court, to the person tried, his majesty's pleasure, or that of the commander in chief.

It is to be regretted that a difference of opinion has often arisen, and still prevails among naval and military men, with respect to the extent of the authority, with which commanding officers in the navy are invested, for punishing soldiers of every description, according to the rules and articles established for the discipline of his majesty's ships of war; or for trying officers or soldiers of the land forces, by naval courts-martial, for any offences committed while serving on board king's ships.

The privileges of parliament do not protect a member, belonging to the army or navy, from being amenable to a court-martial for offences committed in his naval or military capacity; but previous to the arrest of any member, in order to try him for a military crime, it is usual to give notice to the house to which he belongs, with a request, for the sake of public justice, that the house will allow his being put under arrest for trial.

In the navy, as well as in the army, officers suspended, who, in that interval, commit any offence specified in the articles of war, are subject to be tried by courts-martial.

It has been the usage to afford captains in the navy the means of justification, by granting them a public inquiry into their conduct, when superseded or divested of the command of their ships for supposed misconduct; but this is merely of grace, not of right, and, however harsh the instances may occasionally appear, there may often be abundant reasons for withholding such an inquiry, however ardently desired.

Several instances having recently occurred in the military service of officers sent home, by commanders in chief on foreign stations, with articles of accusation against them, but not duly investigated, the duke of York, conceiving the discipline of the army, and the interest of the service to be materially affected, was of opinion that this practice, except in cases of the most urgent necessity, ought to be avoided: because, though it might relieve the commander on the spot from some embarrassments, the

the measure seldom failed to transfer them to head-quarters with increased difficulties. And his royal highness judged it further expedient to express in general orders of the 1st of February 1804, his disapprobation of the erroneous opinion which had prevailed in the army, that an officer who has been put under arrest, had a right, as it is termed, to demand a court-martial upon himself, and to persist in considering himself as still under the restraint of such arrest, although expressly released by the superior officer who imposed it; whereas, in fact, a superior officer is invested with a discretionary power of liberating, as well as of arresting, and of requiring the officer so liberated, to return to his duty as before; nor can an officer insist upon a trial, unless on a charge preferred against him. It by no means follows, however, that an officer, conceiving himself to have been wrongfully put in arrest, or otherwise aggrieved, is without remedy. A complaint is afterwards open to him, if preferred in a proper manner, for which provision is made by a special article of war.

Military and naval courts-martial are subject to the controul and jurisdiction of the supreme courts of king's bench and common pleas; and the members are liable to punishment, for any wanton abuse of power, or illegal proceedings.

JUDGE ADVOCATE. The judge advocate may be said to be the *primum mobile* of a court-martial, as not only impelling it to action, but as being the person on whom, in a great measure, depends that harmony of motion, so necessary to constitute a regular court. He is empowered by the printed instruction to advise the court of the proper forms, when there shall be occasion, and to deliver his opinion in any doubts or difficulties which may arise in the course of the trial. He examines the witnesses on oath, takes down their depositions in writing, and makes minutes of the proceedings to which the court may refer. The act of parliament directs, that, in the absence of the judge advocate, or his deputy, a court-martial has power and authority to appoint any person to execute the office. And although it is usual and necessary for the president, some days before the trial, to appoint, by warrant, a person to officiate as judge advocate, in order that he may timely send to the party accused an attested copy of the articles of charge, give him information of the time and place of trial, furnish him with a list of the witnesses to be adduced against him, and require a similar list from him; also, to summon the witnesses, and all persons concerned; yet the warrant ought to express the appointment to be by the court, according to the construction of the statute; and a majority of the members, when the court is assembled, should concur in the appointment.

-In military courts-martial, the judge advocate general, or some person deputed by him, is empowered to prosecute; and in all trials of offenders by general courts-martial he is to administer the oaths in the forms prescribed. The judge advocate general is appointed by warrant, under the king's sign manual. The commander in chief on a foreign station, by virtue of the power and authority vested in him by his majesty, appoints by warrant any eligible officer, deputy judge advocate. Though a judge advocate may be considered in the light of a prosecutor for the crown, it does not follow that he is to deny every reasonable assistance to the prisoner, in his defence, either in point of law or of justice. It is his duty, that the proof, both on the part of the crown and the prisoner, should be properly laid before the court; where any doubtful point may arise, he should incline on the part of the prisoner; and nothing should induce him to omit any circumstances, in the minutes of proceedings, that might have a tendency to palliate the charges exhibited. In the deliberations and debates of a court-martial, the judge advocate may offer his sentiments and opinion, if required; or, if he observe any error in point of law, or doubts arise, he ought to offer his judgment on the point, for the information of the court; and he should communicate every matter or thing, which may conduce to a legal decision of the points in question.

A deputy or officiating judge advocate in the navy, is paid by certificate, at the rate of four pounds for each trial, in conformity to the standing regulation of the admiralty, made in the year 1780. Although the trial may end in one day, it is usual to insert in the certificate, ten days employed in summoning witnesses, attending the trial, and transmitting a copy of the minutes, &c. Where trials have lasted longer, twelve days have been allowed, at the rate of eight shillings per day. A deputy judge advocate in the army, is usually allowed a constant salary; and the officiating judge advocate has ten shillings per day, for a given number of days, whether the trial last so long or not; but, if its duration exceed that number of days, he is paid at the rate mentioned until the trial is ended, besides an allowance for stationary.

EVIDENCE. All persons subject to military law are bound by their duty to attend and give their testimony at military courts martial, whenever summoned for that purpose; and, should some of the witnesses be persons in a civil capacity, and not bound to obey the citation of such a court-martial, their attendance may be enforced, by an application to the court of king's bench. But there is no act of parliament, compelling persons in civil capacities to attend as witnesses at a naval

court-martial. Witnesses attending are privileged from arrest, and in the army, but not in the navy, it is usual to make an allowance to subalterns for their expences.

On important trials at naval courts-martial, it is customary for the judge-advocate to take preparatory affidavits from the witnesses in support of the charge, which he is to communicate to the commander in chief, and to the president of the court-martial, but not to the several other members summoned, until they are properly laid, in a judicial manner, before the court. Neither is it proper that copies of these affidavits should be delivered, or shewn to the person accused, previous to his trial. Should the trial last longer than one day, it is his duty, at the close of each day, to prepare a fair copy of the proceedings so far as they go, and he continues so to do, until the conclusion of the trial, when the whole should be distinctly read over by him to the court, before the members proceed to deliberate on the sentence to be pronounced, and afterward approved by them. The president is the proper person to put all the interrogatories to the witnesses: and, should the president think proper to decline allowing the judge-advocate to put a question proposed by any of the junior members, it is the practice to clear the court, and it is to be determined by a majority of votes, whether the question should be put or not. The judge advocate as prosecutor in behalf of the crown, and being supposed by law to be able to judge what are proper, has therefore a right to ask all fit questions.

OPENING THE COURT. When a naval court-martial is assembled for trial, the judge-advocate, by direction of the president, reads with an audible voice, standing up, the order for assembling the court, and likewise the order or warrant of his own appointment. It then becomes his duty to administer to the respective members the oath prescribed by act of parliament; and which is usually done by the president, and each member holding his right hand on the evangelists, and, according to seniority, repeating his name, and the words of the oath audibly, after the judge-advocate. The substance of the oath is, duly to administer justice, according to the statute, without partiality; or in cases where the act does not give direction, according to conscience and the usage of the navy. And further not to disclose or discover the vote or opinion of any particular member of the court, unless thereunto required by act of parliament. A similar oath of secrecy is also taken by the judge-advocate, or person officiating as such.

In the army it is usual, at general courts-martial, for the judge-advocate to administer the oath as directed by the mutiny, act and military articles, first to the president alone, and after-

wards to the other members of the court. The oaths are, to try the case and determine according to evidence, duly to administer justice according to the articles of war and the mutiny act; or if any doubt arises, which they do not solve, according to conscience and the custom of war. They further swear not to divulge the sentence of the court, until approved by his majesty, or by some person duly authorised by him; nor upon any account at any time to disclose or discover the vote or opinion of any particular member, unless required to give evidence thereof, as a witness by a court of justice, in a due course of law. The president also administers to the judge-advocate a similar oath of secrecy, as to the opinions of members of the court. The variance between the oaths required at the different courts is not satisfactorily explained.

The prisoner, it is said, may challenge or object to be tried by any member of the court, if for so doing he can assign a valid reason; but he is not intitled to that which, in criminal law proceedings, is called a peremptory challenge; nor is it very clear what causes of objection would be deemed sufficient.

ARREST OF OFFENDERS. Previous to any complaint or accusation to the commanding officer of the ship, it is supposed the offender is under arrest, or in custody. Although neither the naval articles of war, nor the statutes specify the form or nature of arrests previous to trial, yet the mode is well understood by the immemorial usage of the service. It depends upon the rank of the accused, and the degree or measure of the crime with which he stands charged. Should an officer be accused of a capital crime, or an offence of such a nature as might affect his life, or of which the punishment might bear so heavy upon him as to tempt him to elude justice by escaping; it is the custom to detain him in close confinement; but if the offence is of a more trivial nature, he is allowed to be in arrest at large, that is, to walk the deck without interfering in the duty on board; or he may be even allowed to go on shore without his sword, on his word of honour to wait the issue of a trial, or until his enlargement. The master at arms, who acts as provost-marshal in the fleet, takes charge of every prisoner, and keeps him in safe custody until duly authorised to release him. Previous to the day of trial he receives his warrant to officiate as provost-marshal, for which he is paid at the rate of four shillings a day during the time he may have such prisoner in his charge.

In the army, a prosecution may be brought in a court-martial at the instance of a person who is himself not subject to military jurisdiction, provided the offence be of a military nature, and committed by a person under military law; in the naval service,

service, the commander in chief may appoint a prosecutor, and the person injured would be admitted as a witness on the trial.

ACCUSATIONS. In the articles of accusation, the precise formalities which have been deemed necessary in indictments, are in some degree dispensed with, yet the more substantial requisites to justice must be observed. The particular facts charged, and in what manner committed, with the time and place, are directed to be clearly specified. The time may be very material, where there is any limitation in point of time assigned for the prosecution of offenders, as in the case of naval courts-martial, by statute 22 Geo. II. cap. 33. sect. 23. which enacts, that no persons, not flying from justice, shall be tried or punished by any court-martial for any offence, unless the complaint of such offence be made in writing, or unless a court-martial, to try such offender, shall be ordered within three years after the offence committed, or within one year after the return of the ship into any of the ports of Great Britain or Ireland. The offence itself ought to be set forth with clearness, precision, and certainty; thus in cases of mutiny, the facts must be said to be done "in a *mutinous* or *seditionous* manner." In an accusation of murder, it is necessary to say, that the party accused "*murdered*," not killed, &c. It is also necessary in all accusations, that the name, surname, rank, or station, and the ship or regiment to which the offender belongs, should be clearly specified. But when misnomers have been made, it has been usual to keep the prisoner under arrest; and, after the charges have been preferred anew with his name correctly specified, a court-martial may assemble for his trial, on the specific charges originally brought against him. Not only the crime alleged, but the attendant circumstances should be distinctly specified; for example, it is not sufficient to say that an officer behaved in a scandalous, infamous, cruel, oppressive, and fraudulent manner, unbecoming the character of an officer, unless the particular circumstances of such behaviour were clearly defined, and the time and place distinctly specified.

FORMATION OF THE COURT. In Great Britain or Ireland, any complaint or accusation in the navy is to be transmitted by the commander in chief, or senior officer, to the lords of the admiralty, who thereupon issue an order or commission for assembling a court-martial to try the party accused; and the order may be directed to the first, second, or third in command, as may be found most expedient, and for the good of the service; and such flag officer or captain so directed, shall preside at such court-martial. In time of actual service, the lords of the admiralty have even found it expedient to transmit blank orders

to the commander in chief at any of the ports, empowering him to fill up the blanks in the order, with the date, and address of the officer who should happen to be second in command; or if the exigency of the service required it, he might fill it up in the name of the third in command, instead of the second; and having so done, he was instructed to inform the admiralty, that the books of the office might be made to correspond with the orders so filled up. But if in foreign parts, and the commander in chief, or senior officer, should be under the necessity of presiding, the order for assembling a court-martial differs a little in the form from that issued by the admiralty at home, or by a commander in chief to the second or third in command on foreign service.

By section 16, art. 1, of the military articles, (1804,) it is directed, that a general court-martial, in the united kingdom of Great Britain and Ireland, shall not consist of less than thirteen commissioned officers, and the president shall not be the commander in chief, or governor of the garrison where the offender shall be tried, nor be under the degree of a field officer. By article 2, a general court-martial, held at Gibraltar, or other places beyond the seas, shall not consist of less than thirteen commissioned officers, of whom five at least, besides the president, shall not be under the degree of a field officer, unless where a field officer cannot be had; nor shall the president, in any case whatever, be the commander in chief or governor of the garrison, nor under the degree of a captain.

For preventing disputes which may arise between officers of the life-guards or horse-guards, and officers of the foot-guards, in relation to their holding of courts-martial, and upon other points of duty, it is declared, by section 16, art. 3, that when it shall be found necessary to bring any officer or soldier, belonging to the life or horse-guards, before a general court-martial, for differences arising purely among themselves, or for crimes relating to discipline or breach of orders, the courts shall be composed of officers serving in any or all of those corps (as they may then happen to lie for their being most conveniently assembled), wherein the officers are to take post according to the dates and degrees of rank granted them in their respective commissions, without regard to the seniority of corps, or other formerly pretended privileges.

In like manner, also, the officers of the three regiments of foot-guards, for differences arising purely among themselves, or for crimes relating to discipline, or breach of orders, shall of themselves compose courts-martial, and take rank according to their commissions; but for all disputes or differences which may happen between officers or soldiers belonging to the life
or

or horse-guards, and those belonging to the foot-guards, or between officers or soldiers belonging to either of those corps of life, horse, or foot-guards, and those of any other of his majesty's forces, or among officers or soldiers of any other troops, but belonging to different corps, the courts-martial are to be equally composed of officers belonging to the corps, in which the parties complaining and complained of then serve; and the president shall be taken by turns as nearly as the service will with convenience admit, beginning first by an officer of life-guards, and so on in course out of the other corps, according to the seniority in rank of the corps.

No officer serving in the militia can sit in a court-martial, or be tried in such court by any person serving in any other forces.

The members both of general and regimental courts-martial, when belonging to different corps, take the same rank which they hold in the army, but when courts-martial are composed of officers of one corps, they take their ranks according to the dates of the commissions by which they are mustered in that corps.

The provisions of the mutiny act extending both to the land forces and marines, it is declared, that in matters wherein marines are interested, the officers of that body shall be associated with the officers of the land forces, for the purpose of holding courts-martial: and the members of the court so composed take their rank according to the seniority of their commissions in either service. It is likewise provided, that when any of the land forces are employed in the East Indies, courts-martial may be there assembled, composed jointly of the officers in the service of the East India Company, and of the king's forces, with this distinction, that when the person tried belongs to the king's forces, regard shall be had to the regulations of the British mutiny act; and when he belongs to the Company, to the regulations made in pursuance of the act, 27 Geo. II. for the punishment of offences committed by officers or soldiers in their service. Artillery officers, and those serving in the royal corps of engineers, and officers in the corps of royal military artificers and labourers, and all master gunners and gunners in the service of the ordnance, are amenable to courts-martial; and artillery officers may sit in courts-martial with officers of other corps, taking rank according to the dates of their commissions.

In the absence of the judge-advocate for the fleet, or his deputy, it is usual for the officer, who is directed to assemble the court-martial, in this stage of the procedure, to nominate some person to officiate as judge-advocate on the occasion;

and in which appointment, according to the construction of the statute already mentioned, a majority of the members, when the court is assembled, should concur. The president likewise appoints a person to officiate as provost-marshal on the occasion, who is to take the party accused into custody, to produce him at the time of trial, and to keep him until he shall be delivered by due course of law. The commander in chief issues memorandums of notice or summonses to the respective flag-officers and captains of the ships of the squadron present, announcing a court-martial to be held on board a particular ship, on a stated day; at the same time he directs the president to assemble the court at the place and time accordingly, and to give notice to the respective flag-officers and captains, that they may attend in like manner. He issues likewise a memorandum to the captain of the ship, on board of which the court is to be assembled, that he may make the established signal for a court-martial, at the given hour of the day appointed.

Should the president be taken ill in the intervening time, and should it be necessary, on that account, to postpone the trial, the judge-advocate must announce the circumstance to the prosecutor and party accused, that directions may be given to the witnesses on both sides, to attend the court on the new day appointed, instead of that in the former summons.

PROCEEDINGS. When all the officers, who are to constitute the court, are assembled at the time and place appointed; and if any member has absented himself through ill health, the same is to be minutely certified to the court; and the surgeon of the ship, which such member commands, must attend, that he may attest, upon oath, if required, the truth of his inability to attend. Should he decline so doing, and the other testimonials be deemed inadmissible, the members assembled may immediately break up, as not being authorised to form a court, or to dispense with the non-attendance of a member not legally excused; and the reasons are to be stated in a letter to the admiralty, signed by all the members who did attend. On the other hand, when the testimonials are admitted, the court may be formed, and the judge-advocate takes the fact down in the minutes, immediately after the names of the members present, in the forms prescribed.

The preambles to the minutes of courts-martial vary a little in form from the circumstances that may arise at the assembling of such courts, and ought to be carefully recorded by the judge-advocate. The preamble to the minutes of a court-martial, assembled by a senior officer, meeting with five or more ships abroad, differs materially from others, in like manner

manner as his order, as already noticed, for assembling the court. The members being to the right and left of the president, according to seniority, and the judge-advocate facing him at the bottom of the table, the president is to cause the party accused to be brought into court, attended by the provost-marshal; all the witnesses, as well in support of the charge, as in the prisoner's defence, and every other person who shall choose, being admitted, the judge-advocate, standing up, reads audibly the order for assembling the court, and likewise the order or warrant of his own appointment; he then calls over the names of the president and members who have arranged themselves alternately on the right and left hand of the president, and administers to the respective members the oath prescribed.

The judge-advocate then reads the letter of accusation, or charge against the prisoner, and he is required to plead guilty or not guilty. If he stands mute or pleads guilty, sentence passes in course; if he pleads in bar, as a former trial for, or pardon of, the same offence, or that the court is not competent to take cognizance of it, he may have the benefit of such plea; and if, as is most generally the case, he pleads not guilty, the witnesses are ordered to leave the court and the trial proceeds. If the prisoner is a foreigner, he may have the aid of an interpreter, and so may any witness or any member of the court-martial. Trials may be put off on affidavits of the absence of a material witness, but this is purely in the discretion of the court. A trial may also be put off, on an affidavit, either on the part of the prosecutor or of the prisoner, stating that printed pamphlets or papers have been published and circulated, without the procurement or knowledge of the party applying, whereby the public mind has been prejudiced.

The witnesses being sworn, it is the practice of courts-martial for the prosecutor to put all proper questions to them; or the president of the court may, in the first instance, desire them to relate what they know respecting the charge against the prisoner: and afterwards the members, with the approbation of the president, put such interrogatories as they may think proper and necessary, for investigating the truth.

Although the mutiny act does not authorise military courts-martial to inflict a summary punishment for perjury, yet there is no doubt that offenders, subject to military authority, may be proceeded against by indictment, or punished by the sentence of a general court-martial, to be assembled for that purpose. But all persons, who commit, or suborn another to commit wilful perjury, in any evidence or examination at a court-

martial, may be prosecuted in the court of King's Bench, by information or indictment, setting forth only the offence charged upon such person, without mentioning the commission for holding the court-martial, or the particular matter tried, or to be tried before such court.

The court, having gone through the examination of all the witnesses in support of the charge, and allowed the prisoner to cross-question them severally, he is then put on his defence; which, if already prepared, he is allowed to read to the court, or he may dictate it to the judge-advocate, in order to its insertion in the minutes. But should the trial be of importance, and a variety of circumstances have been brought forward, upon which the prisoner was unprepared, he may, upon soliciting the court, be indulged with an adjournment until a subsequent day, for the purpose of the better preparing himself for his defence, and the examination of witnesses in support of what he may have occasion to affirm. The prisoner may submit his defence to the court, either verbally or in writing; and a prosecutor has no right to reply. The prisoner having made his defence, the witnesses in support of it are to be separately called into court, sworn and examined, the prisoner first of all asking them such questions as he may deem proper or material; whether to invalidate the prosecutor's evidence, or to establish his general character and good behaviour. And he is allowed to produce written documents, either in his exculpation, or as to character and good behaviour. The examination of the prisoner's witnesses is conducted in a similar manner to that of the evidence for the prosecution. When the prisoner's interrogatories are ended, the members of the court, or judge-advocate, may put such questions as appear to them proper for disclosing truth. The prosecutor is generally allowed to cross-examine the witnesses upon the points adduced by the prisoner, but he is by no means to introduce new or extraneous matter; and, after that, the prisoner may again put any additional interrogatories to his witnesses; and the prisoner having closed his evidence, and having nothing further to offer in his defence, the court is cleared, that the members may proceed to deliberate on the judgment to be pronounced.

The proceedings at military courts-martial differ in some degree from those of naval. 1. The prosecutor addresses the court in explanation of the charges, and details what he intends to prove. 2. His witnesses are adduced, who are sworn, examined by the prosecutor or court, and afterward cross-examined. 3. The prisoner makes his defence, in which he answers the prosecutor's address, comments on his evidence,

and enters into a detail of the exculpatory evidence he means to bring forward. 4. As this evidence may prove stronger or weaker than the prisoner expected, he is allowed to address the court a second time, when the defence is closed. And, 5. The prosecutor is allowed to reply; and sometimes, by special permission of the court, he may explain by evidence some collateral circumstances omitted.

JUDGMENT. The court being cleared, the members proceed to deliberate on the question guilty or not guilty; and if guilty, to pronounce that judgment which the articles of war, or laws of the land, have annexed to the crime or offence. In discriminating the degrees of guilt with which a prisoner stands charged, it frequently happens at courts-martial, that he may appear not guilty of the identical crime laid to his charge, but of an offence of less magnitude, though of the same species or nature, and nearly connected with it. In this case, it is customary for the court to acquit him of the greater, and finding him guilty of the offence of inferior magnitude, to inflict a corresponding punishment. Although there may appear strong suspicions of a prisoner's guilt of some other crime or offence, not set forth in the charge, yet, in acquitting him of the one he is tried for, the court cannot legally find him guilty of any distinct offence. Neither can a prisoner be found guilty of what may be an *ex post facto* offence, or misdemeanour; that is, one committed after he had been confined, or even indulged as a prisoner at large: but in all such cases he may be ordered into confinement, and brought to a new trial, for the distinct crime or offence appearing against him. In this place it may be proper to remark, that if a prisoner be tried for a crime, said to have been committed on a particular day of the month; and in the course of trial, it is proved to have happened on a day different from what the indictment or accusation sets forth, it is incumbent on the court-martial to acquit him; and he is not liable to be tried a second time for the same offence.

SENTENCE. The members having deliberated on the evidence produced for and against the prisoner, and taken into mature consideration the palliating circumstances, either offered in his defence, or that have arisen in the investigation of facts; the judge-advocate states the question respecting the prisoner's guilt, and which, at naval courts-martial is put to each member separately, beginning with the junior, and ending with the president, and is usually couched in the following words: "Are you of opinion, that the charge against the prisoner is proved or not proved?" Or thus, "Is he guilty or not guilty of the crime laid to his charge?" Should the majority
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of members be of opinion that the charge is proved, those members consequently, are to assign the punishment to be inflicted.

At general courts-martial in the army, it is necessary, in judgment of death, that nine members out of thirteen; or if the number is greater, that two thirds, should concur. The assent of two thirds, in every capital sentence, is likewise requisite in courts-martial, held in Africa or in New South Wales, consisting of a lesser number than thirteen.

Although the members of a naval court-martial may not be unanimous in their determinations upon the matters before them, yet as the sentence drawn up receives its force and validity from the judgment of the majority, all the members present ought to sign such sentence, and which is always countersigned by the judge-advocate. At army courts-martial, the president alone signs the sentence, which is also countersigned by the judge-advocate, who is directed by the mutiny act, sect. 22, to transmit the original proceedings and sentence to the judge-advocate-general in London, or, if held in Ireland, to the judge-advocate in Dublin; to the end that all persons entitled may be enabled to obtain copies. Provisions equally beneficial are made for parties out of Great Britain, but in Europe, but no such privilege is reserved for the navy. It is proper at all trials, that the judge-advocate, or his deputy, or the person empowered to officiate for him, should carefully preserve the original minutes of the proceedings, as recorded by him during the course of any trial; and he should also keep in his possession distinct notes of the opinions and votes of the several members, on deliberating upon the articles of accusation, and pronouncing judgment; in order that he may be fully prepared to answer any questions or discussions that may be afterwards moved in parliament, or in the ordinary courts of law, relative to the trial, in the event of his being called upon to give evidence.

ACQUITTAL. When accusations are made and not substantiated by proofs, courts sometimes declare their judgments of acquittal, in terms which convey censure on the prosecutor, by pronouncing the charges *malicious, vexatious, and without any foundation.*

PUNISHMENTS. In several cases, both in the army and navy, the punishment is not *discretionary*, but sentence of death must be pronounced; in many others, however, the penalty is left to the discretion of the court, and sometimes punishments of different degrees of rigour are inflicted. When the court has determined, or the law has fixed the penalty, the judge-advocate draws up the sentence; the prisoner and audience are admitted; and

and judgment is pronounced in open court. Neither the naval nor military articles prescribe the mode of inflicting the punishment of *death*. It is usual in the navy to adjudge an admiral, or officer of rank, to be shot for a capital offence. There are some instances of sentences dooming captains and lieutenants to be shot, and others ordering them to be hanged. In the army it is the general practice to adjudge officers or soldiers found guilty of capital offences, to be shot; but for deserting to the enemy, or for theft, a soldier is usually hanged, as the most ignominious mode of punishment.

In cases where no statute orders sentence of death, it is in the power of courts both naval and military, to inflict, according to the nature and degree of the offences, various sentences from the highest order to the lowest: namely, corporal punishment from twelve to one thousand lashes on the bare back, with a cut-o'-nine-tails; running the gauntlet; degradation of rank, and being ignominiously towed from a ship to the shore, with a halter round the offender's neck; degradation of rank, and to serve on board any ship in a subordinate situation, or as a common seaman; imprisonment; dismissal from his majesty's service, and for ever rendered incapable of serving in any military or civil capacity; dismissal without expressing incapacity of serving again; dismissal from the ship to which the offender (if an officer) belonged, sometimes with the addition of being degraded, and put on the bottom of the list of officers in which he ranks; the mulct of pay; suspension of rank and pay for a limited time; severe or moderate reprimand and admonition, which are the lowest shades of punishment. In the navy there are very few instances of commissioned officers being degraded in rank, and reduced by the sentence of a court-martial to serve in inferior situations; but warrant officers have repeatedly not only been degraded and reduced to serve in subordinate situations, but also adjudged to receive corporal punishment. The naval list of punishments includes those of keel-hauling, ducking, mast-heading, and seizing the offender by his arms and legs to the shrouds, and there leaving him for hours, as is vulgarly called like a spread eagle.

Of *imprisonment*. It may be necessary to observe, that by statute, no person convicted of any offence can be imprisoned for a longer term than two years, by the sentence of any naval court-martial. Prior to this act, which was 22 Geo. II. courts-martial have adjudged persons to be imprisoned for ten or fifteen years, and sometimes even for life.

The *gauntlope*, pronounced gauntlet, is a military punishment for felony, or some other heinous offence, known to most nations in Europe. In the navy, it is usually inflicted on incorrigible delinquents,

delinquents, detected in robberies, pilfering or other scandalous practices. The punishment is inflicted in the following manner : the whole ship's crew is ranged in two rows, standing face to face on both sides of the deck, so as to form a line whereby to go forward on one side and return aft on the other ; each person being furnished with a small twisted cord, or spun yarn, called a knittle, having two or three knots upon it. The delinquent is then stripped naked, above the waist, and compelled to march forward in ordinary or quick time, between the two rows of men, and aft on the other side, a certain number of times, rarely exceeding three, during which, every person gives him a stripe with his knittle as he passes along. Although the punishment is termed *running* the gauntlet, yet in the navy the delinquent is never permitted to run between the ranks of his executioners, but is compelled to march in ordinary or quick time, preceded by the master at arms with a drawn sword pointed in the rear towards him, while the corporal follows him behind with another drawn sword ; or, instead of the corporal, it is sometimes usual to cause the boatswain's mate to follow him, furnished with a cat-o'-nine-tails, but he never applies the lash of it, in the march, unless the offender makes a retrograde movement. In the army, when a soldier is sentenced to run the gauntlet, the regiment is drawn up in two ranks facing each other ; each soldier, having a switch in his hand, lashes the criminal as he runs along naked from the waist upwards. While he runs, the drums beat at each end of the ranks. Sometimes he runs three, five, or seven times, according to the nature of the offence. The major is on horseback, and takes care that each soldier does his duty. Of late years, however, this punishment has been disused in the army, nor is there in the navy more than one instance of its being inflicted by order of a court-martial.

Neither the punishment of *flogging*, nor that of running the gauntlet, is so severe in the army as in the navy. One dozen of lashes applied to the bare back by a boatswain's mate, furnished with a naval cat-o'-nine tails, is equivalent at least to fifty lashes laid on by a drummer with a military cat. This arises, not so much from the expertness of one executioner, over another, in the mode of laying on his lashes, as from the greater thickness, hardness, and severity of the one instrument of punishment than the other.

Keel-hauling is never ordered by a court-martial, and rarely inflicted by commanders. It was frequently resorted to in the fleet, as well as in the merchant service at the early periods after the revolution, and it appears to have been borrowed from the Dutch navy, where it is still practised. It is executed by plunging the delinquent repeat-

repeatedly under the ship's bottom on one side, and hoisting him up at the other, after having passed under the keel. The blocks or pullies by which he is suspended, are fastened to the opposite extremities of the main-yard, and a weight of lead or iron is hung upon his legs, to sink him to a competent depth. By this apparatus he is drawn close up to the yard-arm, and thence let fall suddenly into the sea; where passing under the ship's bottom he is hoisted up on the opposite side of the ship. And this, after sufficient intervals of breathing, is repeated two or three times.

Ducking is a marine punishment, now seldom used, for uncleanness, blasphemy, or scandalous actions. The French inflict it on those who have been convicted of desertion, or exciting sedition. The criminal is placed astride on a short thick batten, fastened to the end of a rope, which passes through a block hanging at one of the yard arms. Thus fixed, he is hoisted suddenly up to the yard, and the rope being slackened at once, he is allowed to fall into the sea. This chastisement is repeated several times, and by having double-headed shot fastened to his feet during the punishment, he sinks a considerable depth before he is hoisted up again.

The punishment of *mast-heading* is frequently inflicted on young midshipmen, at the discretion of the captain or commanding officer, for misconduct, neglect of duty, or trivial offences.

EXECUTION OF CORPORAL PUNISHMENT. In carrying the sentences of naval courts-martial for corporal punishment into execution, the admiral, or commanding officer of the ships and vessels for the time being, issues orders to the captain of the flag, or other particular ship, to make the signal for the boats of the squadron to assemble, manned and armed, on the day appointed to attend the punishment; and likewise directs the other captains to send a lieutenant with a boat manned and armed from their respective ships to attend and assist. An order is at the same time issued, to the captain or commander of the ship to which the prisoner belongs, (accompanied with a copy of the sentence) directing him to cause the punishment to be inflicted alongside of the different ships, in the manner, and in such proportions, as therein specified. It is usual to include in this order, directions to the captain to cause the surgeon of the ship to attend in the boat with the lieutenant, as well as one of his mates in the long boat with the prisoner, for the purpose of judging of his ability to bear all his punishment; which the surgeon may put a stop to, when he conceives him unable to bear any more with safety. The provost-marshal is ordered to attend, and read publicly the sentence of the court-martial alongside of each ship.

OF DEATH. When the king approves of a sentence of death, the warrant for execution is transmitted by the admiralty to the officer commanding the ships and vessels at the place for the time being, who issues the necessary orders, agreeably to the forms of the service; and in pursuance of them, preparations are made. When the fatal morning arrives, the signal of death is displayed, the assemblage of boats, manned and armed, surrounds the ship appointed for the execution. The crews of the respective ships are arranged on deck, and after hearing the articles of war read, await in silence the awful moment. At length a gun is fired (the signal to rouse attention), and at the same instant, the victim is run up by the neck to the yard arm.

Military executions are attended with still more parade and solemnity. In no service or country is the ceremony so awful and impressive. The sentence of death being approved by the king, the warrant is issued under the sign manual; and on foreign stations the commander in chief issues his warrant to the second in command, and appoints the time and place for carrying the sentence of death into execution. General orders are in consequence issued from the adjutant general's office, arranging the regiments and corps allotted for parade, guards, and execution parties. Five execution parties, each consisting of a serjeant and twelve rank and file, are appointed, of whom the provost-marshal takes the command on their arrival at the guard. All the guards of the garrison and advanced posts leave their centres at their respective stations, and repair themselves to the provost-marshal's guard, at the hour appointed, for the purpose of escorting the prisoner to the place of execution. All these guards, as well as the execution parties, under the immediate direction of the provost-marshal, are commanded by the field officer of the day. The several corps of the line, at the appointed hour and place, parade three deep, and are prepared to draw up so as to form the three sides of a square. The execution parties in divisions, preceded by a band of music, and a corps of drummers, with the provost-marshal on horseback at their head, march in ordinary time at the front of the prisoner. The music plays the dead march in Saul. The guards formed in divisions, march at the same time in rear of the prisoner. The main-guard, commanded by the captain of the day, leads. The others follow in succession, according to the rank of their regiments. The procession comes into the square from the rear by the right, and the music and drums of each corps play and beat to the slow march in Saul, as the procession passes along its front. The execution parties march along the front of the whole line, and as far as the coffin placed in the centre, where the first three divisions halt, and wheel back on their right
 pivots

pivots in line. The fourth and fifth divisions continue to advance until they can form opposite to the first three, by wheeling back into line on their left pivots. The dreadful moment now approaches,—the music ceases,—an awful silence ensues—the warrant and sentence of death are audibly read,—the signal is given,—and the fire of the execution parties puts an immediate end to the prisoner's existence.

PARDON. In courts-martial, as in other cases, the benevolence of the English law has lodged in the hands of the sovereign the power of pardon, either total, or by remitting or mitigating the sentence, or by reprieving the prisoner. He may also, if he disapproves the sentence, order the court to sit again, and revise their proceedings.

AUDITORS OF PUBLIC ACCOUNTS. In former times the duty of revising certain branches of public expenditure was confided to two officers appointed by patent, and called auditors of the imprest : but the commissioners of public accounts having, in their twelfth report, dated the 8th of June, 1784, represented that no solid advantage was derived to the public from their establishment, as it was then constituted; and having urged the propriety and necessity of introducing into this office, regulations similar to those they had recommended for other offices, an act was passed in the following year (25 Geo. III. c. 52.), which, after a preamble, stating the importance of providing a more effectual method for examining the public accounts of the kingdom, proceeds to vacate the patents of lord Sondes, and lord viscount Mountstuart, the two auditors of the imprests (on a compensation of 7000*l.* each per annum being made to them for their interest in the same) abolishes the receipt of all fees, gratuities and perquisites; and directs certain fixed annual salaries to be paid to the officers and clerks employed in the department for auditing the public accounts. The act then enables his majesty to appoint five commissioners for auditing the public accounts (two of them to be the comptrollers of army accounts for the time being), and to grant fixed salaries to each, not exceeding, on the whole, 4000*l.* clear of all deductions. Such commissioners to hold their offices during good behaviour. It then vests the appointment of the officers and clerks, and the power of allowing sums for stationary, coals, and contingencies, in the board of treasury, and limits the expence to 6000*l.* The rest of the act contains directions for the whole proceeding in auditing the accounts, gives the power of examining upon oath, and makes written vouchers necessary for every article in the accounts. By virtue of the powers in this act, his majesty issued a commission under the great seal in June 1785, appointing the two comptrollers of army accounts, and three other gentlemen, to be commissioners for auditing the public accounts. To the

comptrollers, in addition to their existing salaries, which with fees exceeded 700*l.* an annual sum of 500*l.* was given, and to the other three commissioners 1000*l.* each. The office is in Somerset House. In 1805, Mr. Pitt, finding that these commissioners could not fulfil their duties to the full extent, took measures for appointing a new set of commissioners with further powers, and an establishment of clerks and assistants, sufficient, as it was expected, to complete the necessary and important task confided to them. The death of that minister prevented his completing the plan, but it was pursued and extended by his successors.

PATRIOTIC FUND. Some account has already been given of the modes devised by the public care, and royal and individual munificence, for the relief of those who are wounded, or become helpless in the public cause, and for the benefit of their widows and orphans. Still it has ever been found, that, on extraordinary occasions, the number of claimants in various degrees of affinity with the sufferers, exceeded the powers of relief which could be made consistent with the just distribution of public money. It had therefore become customary, when any hard-fought battle, or sudden calamity involved great numbers in distress, to open subscriptions, the amount of which was distributed by a committee, for the benefit of those who were wounded, made widows or orphans, or otherwise reduced to distress by the calamities attending the sea or land service. These subscriptions were generally, but not always, commenced in consequence of some distinguished engagement, but other occasions produced similar efforts of public benevolence; as the sinking of the *Royal George* in 1782, and the subscription for supplying the army in Holland with warm clothing in 1794. Great sums were frequently collected by these patriotic exertions, but still they did not answer every purpose. Their destination was limited to the express object for which the subscription was proposed, and hence it happened that many meritorious services, and grievous calamities were unrewarded and unrelieved, because the actions from which they arose were not sufficiently grand to claim general attention; nor did these subscriptions afford the means of rewarding, or expressing approbation of bravery and merit, in any other mode than the support of those whom the fate of war had reduced to misery.

Experience of these inconveniences, and a desire to establish at once a fund which should be permanently beneficial, and the amount of which might be expended in every mode of relief and reward which the gratitude and justice of the country might require, impelled the merchants of London, at the beginning of the war in 1803, to propose a subscription on a new plan.

plan. On the 20th of July, 1803, the merchants, underwriters, and other subscribers to Lloyd's Coffee House, met at that place for the purpose of setting on foot a general subscription, on an extended scale, for the encouragement and relief of those who might be engaged in the defence of the country, and who might suffer in the common cause, and of those who might signalize themselves during the present most important contest.

This patriotic and public-spirited body adopted, at their first meeting, resolutions in these terms.

"That, in a conjuncture when the vital interests of our country, when the peculiar blessings which, under our beloved sovereign and happy constitution, endear our social state, are involved in the issue of the present contest; when we are menaced by an enemy, whose haughty presumption is grounded only on the present unfortunate position of the continental powers; and when we seem to be placed for the moment, as the last barrier against the total subjugation of Europe, by the overbearing influence of France, it behoves us to meet our situation as men, as freemen, but above all, as *Britons*. On this alone, with the divine aid, depends our exemption from the yoke of Gallic despotism; on this alone depends, under the same protecting power, whether this empire shall remain, what it has for ages been, the strenuous supporter of religion and morals, the asserter of its own, and the guardian of the liberties of mankind, the nurse of industry, the protector of the arts and sciences, the example and admiration of the world; or whether it shall become an obsequious tributary, an enslaved, a plundered, and degraded department of a foreign nation.

"That, to give more effect and energy to the measures adopted by government for the defence of our liberties, our lives, and property; to add weight to those personal exertions which we are all readily disposed to contribute, it behoves us to hold out every encouragement to our fellow subjects, who may be in any way instrumental in repelling or annoying our implacable foe; and to prove to them, that we are ready to drain both our purses and our veins, in the *great cause* which imperiously calls on us to unite the duties of loyalty and patriotism with the strongest efforts of zealous exertions.

"That, to animate the efforts of our defenders by sea and land, it is expedient to raise, by the patriotism of the community at large, a suitable fund for their comfort and relief; for the purpose of assuaging the anguish of their wounds, or palliating in some degree the more weighty misfortune of the loss of limbs; of alleviating the distresses of the widow and orphan; of smoothing the brow of sorrow, for the fall

“ of dearest relatives, the props of unhappy indigence or helpless age ; and of granting pecuniary rewards, or honourable badges of distinction, for successful exertions of valour or merit.

“ That a subscription, embracing all the objects in the foregoing resolution, be now opened ; and, to set an example to the public bodies throughout the United Kingdom and its dependencies, and to our fellow subjects of every class and denomination, that, independently of our individual contributions, the sum of *twenty thousand pounds, 3 per cent. consolidated annuities*, part of the funded property of this society, shall be appropriated to this purpose.”

They further resolved ; “ that such part of the fund as shall not be used for the purposes now intended, be returned in proportion to the sums subscribed. And that all sums, however small, which shall be offered by the patriotism of the poorer classes of our fellow subjects, shall be accepted ; the cause affecting equally the liberties and lives of persons of every description.”

At their next meeting, on the 29th of July, the first fifty persons who had subscribed 100*l.* and upward, were formed into a committee, with power to add to their number, which they subsequently did. The subscription, which was speedily very prosperous, received the name of the *Patriotic Fund*, and seven members were appointed a committee of treasury, and three were nominated trustees for the purchase and sale of stock, or other government securities, for the purposes of the institution.

The benevolence of the public did not disappoint the expectation of those who proposed the plan ; the subscription was rapidly and extensively successful. The rich and the poor were equally zealous in contributing ; some individuals gave 1000*l.* and those who could only offer a few shillings, found their tribute received with kindness ; public bodies gave portions of their funds, and convivial societies contributed from their stock purses ; the officers, non-commissioned officers, and privates of several regiments carried in a share of their pay ; and the theatres in the metropolis, and in various parts of the country, aided the general design by benefit plays, which produced considerable sums. As the war was not at first distinguished by many achievements which occasioned calls on the fund, it acquired a great amount and solid consistency. On such occasions as first occurred, the committee felt that it was sometimes necessary to grant annuities for lives, instead of sums for temporary relief, and they humanely ordered, that in all such cases a year should be paid in advance.

On the first of March, 1804, the committee, for the satisfaction of the subscribers, published a report of their proceedings, by which it appeared that no act of signal bravery had passed unnoticed, and that no species of distress occasioned by calamitous incidents in the war had been left unrelieved. Sums of money, pieces of plate, swords, and other honorary memorials, had been given to those who displayed conspicuous merit; the wounded obtained sums of money, according to their necessities, which were not paid till they produced certificates of convalescence; and on the surviving relatives of those who were slain annuities were settled of various amounts.

The mode of donation was not more judicious, than the progress of the collection was gratifying. The amount of the subscription was, in 3*l.* per cent. stock, 21,200*l.* and in money, which had then been laid out in government securities, and was bearing interest, 154,455*l.* 18*s.* 5*d.*; and the dividends then actually received amounted to 3768*l.*

In this manner the Patriotic Fund continued to be augmented and applied, till the latter part of the year 1805, when the glorious and disastrous battle off Trafalgar, filled the nation at once with pride, gratitude, and affliction. The committee, on this occasion, felt the necessity of distributing large sums of money, and they appealed to the characteristic humanity of the nation to prevent their powers of doing good in future from being impaired by the present exertion. The appeal was attended with the happiest effect; the clergy, to their infinite honour, aided the cause of humanity and patriotism, by preaching sermons in honour of the departed Nelson, and at the same time animating the public generally in favour of those who were sufferers by partaking in his glory. The subscription was revived with general ardour, and the donations of individuals, assisted by the collections made in churches and chapels, added more than 120,000*l.* to the fund.

To this truly noble and patriotic establishment, the wounded sailor and soldier may look with confidence for a supply which shall enable him to defy want and pursue honest industry; the widow may find her heart relieved from those pangs which are occasioned by the prospect of immediate want, and by anxiety for unprotected orphans; and the public may contemplate with satisfaction the numbers snatched from vice and infamy by timely aid, and rendered, instead of the disgrace and scourge, the honour and the support of the country. Above all, in times when union in sentiment and exertion are most essential to the nation, the poor have a visible, substantial, and beneficial proof of the liberal gratitude with which the rich and the powerful consider their services, and pour forth a portion of their wealth

to encourage and reward those who have struggled for the general good, and fought for freedom and for safety.

THE LAW.

In this division of the work, it is not presumed that information will be afforded respecting the law of England in general, or any particular head or description of law, sufficient to supersede the necessity of further research; but the end generally aimed at will be to convey a clear notion of the law itself, of the various courts in which it is administered, and the principal persons engaged in regulating and fixing the course of justice.

LAW IN GENERAL. Law, by a common, but too diffuse, interpretation, is termed a rule of action, and applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational, to motion, gravitation, optics, mechanics, and many other subjects, as well as the government of man, the regulation of his conduct, and the preservation of his rights. On this general definition it is well observed, that when the word law is applied to motion, gravitation, or mechanics, it will be found, in every case, that with equal or greater propriety and perspicuity, might have been used the words quality, property, or peculiarity. The use of the word in speaking of inanimate objects is only sanctioned by custom; and an extension of its application, beyond the precise points to which it has been limited by usage, would be considered an instance of affectation or pedantry, or perhaps censured as altogether improper. These remarks would seem superfluous on the present occasion, had not most writers who treat on law as a science begun with such an explanation; Mr. Christian, in his edition of Blackstone, furnishes the argument against its propriety.

In a more correct and limited, though yet sufficiently extensive sense, municipal law is described to be a rule of civil conduct, prescribed by the supreme power in a state. Perhaps this may not, as a definition, stand exempt from censure in the minds of those who speculate with great refinement on the nature and modes of government; still it enjoys the advantage of being known, explained, and enforced by respectable authority, it is sufficiently abstract, for all practical purposes, and sufficiently easy to be received into every understanding.

THE LAW OF ENGLAND. By the act of settlement, the laws of England are declared to be the birth-right of the people; and,

and, according to an ancient maxim of the common law, this our birth-right in the laws is to be esteemed our most valuable inheritance, superior to every other denomination of property. *Major hereditas unicuique venit à jure et legibus quam à parentibus.* Lord Coke says, it “ is the best birth-right the subject hath ; for thereby his goods, lands, wife, children, his body, life, honour, and estimation, are protected from injury and “ wrong.”

The municipal law of England, by which these great purposes are better effected than in any other known community, is divided into two kinds : the *lex non scripta*, the unwritten, or common law ; and the *lex scripta*, the written, or statute law. The unwritten law includes not only *general customs*, or the common law properly so called ; but also the *particular customs* of certain parts of the kingdom ; and likewise those *particular laws*, that are by custom observed only in certain courts and jurisdictions.

UNWRITTEN LAW. This law, although described as not written, is not at this time purely *oral*, or communicated from former ages to the present solely by word of mouth. It is true indeed that, in the profound ignorance of letters which formerly overspread the whole western world, all laws were entirely traditional, because the nations, among which they prevailed, had but little idea of writing. But, with us, at present, the monuments and evidences of our legal customs are contained in the records of the several courts of justice, in books of reports and judicial decisions, and in the treatises of learned sages of the profession, preserved and handed down to us from the times of highest antiquity. They are termed unwritten, because their original institution and authority are not set down in writing, as acts of parliament are ; but they receive their binding power, and the force of laws, by long and immemorial usage, and by their universal reception throughout the kingdom. This unwritten, or common law, is properly distinguishable into three kinds : 1. General customs ; which are the universal rule of the whole kingdom, and form the common law, in its stricter and more usual signification. 2. Particular customs ; which, for the most part, affect only the inhabitants of particular districts. 3. Certain particular laws ; which by custom are adopted and used by some particular courts of pretty general and extensive jurisdiction.

GENERAL MAXIMS. The general maxims, or common law properly so called, form that system by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. This, for the most part, settles the course by which lands descend by inheritance ; the manner and

form of acquiring and transferring property; the solemnities and obligations of contracts; the rules of expounding wills, deeds, and acts of parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. These customs and maxims are known, and their validity determined by the judges in the several courts of justice, who are the depositaries of the laws, the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. Their knowledge of that law is derived from experience and study; and each of them is sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. Yet this rule admits of exception, where the former determination is most evidently contrary to reason; even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was *bad law*, but that it was *not law*; that is, that it is not the established custom of the realm, as has been erroneously determined.

The judgment of the judges, and all the proceedings previous thereto, are carefully registered and preserved, under the name of *records*, in public repositories set apart for that particular purpose; and to them frequent recourse is had, when any critical case arises, in the determination of which former precedents may give light or assistance. They are also handed out to public view in the numerous volumes of *reports*, which furnish the lawyer's library. These reports are histories of the several cases, with a short summary of the proceedings, which are preserved at large in the record, the arguments on both sides, and the reasons the court gave for its judgment, taken down in short notes by persons present at the determination; and these serve as indexes to, and also to explain, the records; which always, in matters of consequence and nicety, the judges direct to be searched. The reports are extant in a tolerably regular series from the reign of Edward the second inclusive. Besides these reporters, there are also other authors, to whom great veneration and respect are paid by the students, and by the judges, as works of the very highest authority in the law.

PARTICULAR CUSTOMS. The particular customs or laws which

which affect only the inhabitants of particular districts are, without doubt, the remains of that multitude of local customs out of which the common law, as it now stands, was collected, at first by Alfred, and afterwards by Edgar and Edward the Confessor; each district mutually sacrificing some of its own special usages, in order that the whole kingdom might enjoy the benefit of one uniform and universal system of laws. But for reasons that have been now long forgotten, particular counties, cities, towns, manors, and lordships, were very early indulged with the privilege of abiding by their own customs, in contradistinction to the rest of the nation at large; which privilege is confirmed to them by several acts of parliament. Such is the custom of *gavelkind* in Kent, and some other parts of the kingdom, which ordains, among other things, that not the eldest son only of the father shall succeed to his inheritance, but all the sons alike: and that, though the ancestor be attainted and hanged, yet the heir shall succeed to his estate, without any escheat to the lord. Such is the custom that prevails in divers ancient boroughs, and therefore called *borough-English*, that the youngest son shall inherit the estate, in preference to all his elder brothers. Such is the custom in other boroughs, that a widow shall be intitled, for her dower, to all her husband's land; whereas at the common law she shall be endowed with one third part only. Such also are the special and particular customs of manors, of which every one has more or less, and which bind all the copyhold and customary tenants that hold of the said manors. Such likewise is the custom of holding divers inferior courts, with power of trying causes, in cities and trading towns; the right of holding which, when no royal grant can be shewn, depends entirely upon immemorial and established usage. Such, lastly, are many particular customs within the city of London, with regard to trade, apprentices, widows, orphans, and a variety of other matters. All these are contrary to the general law of the land, and are good only by special usage; though the customs of London are also confirmed by act of parliament. To this head may most properly be referred a particular system of customs used only among one set of the king's subjects, called the custom of merchants, or *lex mercatoria*: which, however different from the general rules of the common law, is yet ingrafted into it, and made a part of it; being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions.

Of these particular customs, some are acknowledged by the law, as *gavelkind*, and *borough-English*; some are to be proved before a jury, and not by the judges, except the same particular custom has been before tried, determined, and record-

ed in the same court; and the customs of London are certified to the court wherein they are in question in a prescribed form from the Lord Mayor and aldermen, by the mouth of the recorder.

A custom must be *legal*, or it may be abolished; it must be so *ancient* that the memory of man runneth not to the contrary; for if its commencement can be proved within any time since the first year of Richard I. it is not good; it must have been *continued*, for an interruption of the right will destroy it, though a mere interruption of the possession will not; it must have been *peaceable*, or acquiesced in without contention or dispute; it must be *reasonable*, or, at least, not unreasonable; it must be *certain*, or, at least, capable of being rendered so; *compulsory*, and not left to option; and, lastly, customs must be *consistent* with each other, for opposite customs relating to the same object cannot be of equal antiquity. In the allowance of customs, those which are in derogation of the common law are taken in the utmost strictness, and none can prevail against the king's prerogative. Thus by the custom of gavelkind, a person aged fifteen may, by deed of feoffment, convey away his lands, in fee simple for ever; but he cannot, at that age, convey them by any other deed, or even make a lease for seven years; also if the king purchases lands of the nature of gavelkind, where all the sons inherit equally; yet, upon his demise, his eldest son alone shall succeed to those lands.

CIVIL AND CANON LAWS. By the peculiar laws, which by custom are adopted and used only in certain peculiar courts and jurisdictions, are meant the civil and canon laws. These laws are reduced to writing and set forth by authority, but are ranked among the *leges non scriptæ*, because they are not of any force in England, except in some particular cases and courts, where they have been admitted and received by immemorial usage and custom; or else, because they are, in some other cases, introduced by consent of parliament, and then they owe their validity to the *leges scriptæ*, or statute law.

By the civil law, absolutely taken, is generally understood the civil or municipal law of the Roman empire, as comprized in the institutes, the code, and the digest of the emperor Justinian, and the novel constitutions of himself and some of his successors. The Roman law (founded first upon the regal constitutions of their ancient kings, next upon the twelve tables of the decemviri, then upon the laws or statutes, enacted by the senate or people, the edicts of the prætor, and the *responsa prudentum*, or opinions of learned lawyers, and, lastly, upon the imperial decrees, or constitutions of successive emperors) had
grown

grown to so great a bulk that, by an author who preceded Justinian, they were computed to be many camels' load. This was in part remedied by the collections of three private lawyers, Gregorius, Hermogenes, and Papirius; and then by the emperor Theodosius the Younger, by whose orders a code was compiled, A. D. 438, being a methodical collection of all the imperial constitutions then in force: which Theodosian code was the only book of civil law received as authentic in the western part of Europe, till many centuries after; and to this it is probable that the Franks and Goths might frequently pay some regard, in framing legal constitutions for their newly erected kingdoms. For Justinian commanded only in the eastern remains of the empire; and it was under his auspices, that the present body of civil law was compiled and finished by Tribonian and other lawyers, about the year 529. This consists of, 1. The institutes, which contain the elements or first principles of the Roman law, in four books. 2. The digests, or pandects, in fifty books; containing the opinions and writings of eminent lawyers, digested in a systematical method. 3. A new code, or collection of imperial constitutions, in twelve books; the lapse of a whole century having rendered the former code of Theodosius imperfect. 4. The novels, or new constitutions, posterior in time to the other books, and amounting to a supplement to the code; containing new decrees of successive emperors, as new questions happened to arise. These form the body of Roman law, or *corpus juris civilis*, as published about the time of Justinian; which however soon fell into neglect and oblivion, till about the year 1130, when a copy of the digests was found at Amalfi in Italy; which accident, concurring with the policy of the Roman ecclesiastics, suddenly gave new vogue and authority to the civil law, introduced it into several nations, and occasioned that mighty inundation of voluminous comments with which this system of law, more than any other, is now loaded.

The *canon law* is a body of Roman ecclesiastical law, relative to such matters as that church either has, or pretends to have, the proper jurisdiction over. This is compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulles of the holy see. All which lay in the same disorder and confusion as the Roman civil law, till about the year 1151, when one Gratian, an Italian monk, animated with the discovery of Justinian's pandects, reduced the ecclesiastical constitutions also into some method, in three books; which he entitled *Concordia Discordantium Canonum*, but which are generally known by the

name of *Decretum Gratiani*. These reached as low as the time of Pope Alexander III. The subsequent papal decrees, to the pontificate of Gregory IX. were published in much the same method under the auspices of that pope, about the year 1230, in five books; entitled *Decretalia Gregorii Noni*. A sixth book was added by Boniface VIII. about the year 1298, which is called *Sextus Decretalium*. The Clementine constitutions, or decrees of Clement V. were in like manner authenticated in 1317, by his successor John XXII; who also published twenty constitutions of his own, called the *Extravagantes Joannis*: all which in some measure answer to the novels of the civil law. To these have been since added some decrees of later popes, in five books, called *Extravagantes Communes*. And all these together, Gratian's decrees, Gregory's decretals, the sixth decretal, the Clementine constitutions, and the extravagants of John and his successors, form the *corpus juris canonici*, or body of the Roman canon laws. Besides these pontifical collections, which during the times of popery were received as authentic in this island, as well as in other parts of christendom, there is also a kind of national canon law, composed of *legatine* and *provincial* constitutions, and adapted only to the exigencies of this church and kingdom. The *legatine* constitutions were ecclesiastical laws, enacted in national synods, held under the cardinals Otho and Othobon, legates from pope Gregory IX. and pope Clement IV. in the reign of Henry III. about the years 1220 and 1268; the provincial synods, held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III. to Henry Chichele, in the reign of Henry V. and adopted also by the province of York, in the reign of Henry VI. At the dawn of the reformation, in the reign of Henry VIII. it was enacted in parliament, that a review should be had of the canon law; and till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And, as no such review has yet been perfected, upon this statute now depends the authority of the canon law in England. As for the canons enacted by the clergy under James I. in the year 1603, and never confirmed in parliament, it has been solemnly adjudged upon the principles of law and the constitution, that where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity, whatever regard the clergy may think proper to pay them.

There are four species of courts, in which the civil and canon laws are permitted (under different restrictions) to be used.

used. 1. The courts of the archbishops and bishops, and their derivative officers, usually called in our law, courts christian, *curiæ christianitatis*, or the ecclesiastical courts. 2. The military courts. 3. The courts of admiralty. 4. The courts of the two universities. In all, their reception in general, and the different degrees of that reception, are grounded entirely upon custom; corroborated in the latter instance by act of parliament, ratifying those charters which confirm the customary law of the universities. But in these courts, these laws cannot be exercised to any greater extent than is warranted by custom or by statute, and any incroachment is prevented by these means: 1. The courts of common law have the superintendency over these courts; to keep them within their jurisdiction, to determine wherein they exceed them, to restrain and prohibit such excess, and (in case of contumacy) to punish the officer who executes, and in some cases, the judge who enforces the sentence so declared illegal. 2. The common law has reserved to itself the exposition of all such acts of parliament, as concern either the extent of these courts, or the matters depending before them. Therefore, if these courts either refuse to allow these acts of parliament, or will expound them in any other sense than what the common law puts upon them, the king's court at Westminster will grant prohibitions to restrain and controul them. 3. An appeal lies from all these courts to the king, in the last resort; which proves that the jurisdiction exercised in them is derived from the crown of England, and not from any foreign potentate, or intrinsic authority of their own.

WRITTEN LAWS. The written laws of the kingdom are statutes, acts, or edicts, made by the king's majesty, by and with the advice and consent of the lords spiritual and temporal and commons in parliament assembled. The oldest of these now extant, and printed in our statute books, is the famous *magna charta* as confirmed in parliament 9 Hen. III.: though doubtless there were many acts before that time, the records of which are now lost, and the determinations of them perhaps at present currently received for the maxims of the old common law.

The method of making these statutes has already been explained; they are either *general* or *special*, *public* or *private*; the distinction between which has already been stated, vol. i. p. 271.

Statutes also are either *declaratory* of the common law, or *remedial* of some of its defects. *Declaratory*, where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case, the parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and
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difficulties, to declare what the common law is, and ever has been. *Remedial* statutes are those which are made to supply such defects, and abridge such superfluities in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever. And this being done either by enlarging the common law, where it was too narrow and circumscribed, or by restraining it, where it was too lax and luxuriant, has occasioned another subordinate division of remedial acts of parliament, into *enlarging* and *restraining* statutes.

An *enlarging* or an *enabling* statute is one which increases the power of action; thus the 32 Hen. VIII. c. 28. which gave bishops, and all other sole ecclesiastical corporations, except parsons and vicars, a power of making leases, which they did not possess before, is always called an enabling statute. The 13 Eliz. c. 10. which afterward limited that power, is, on the contrary, styled a restraining or disabling statute.

COURTS. In order to put the laws in execution, the king is considered as the fountain of justice, the general conservator of the peace of this kingdom. He has alone the right of erecting courts of judicature; their jurisdictions are, either mediately, or immediately, derived from the crown, and their proceedings are generally in the king's name; they pass under his seal, and are executed by his officers. It is probable, and almost certain, that in very early times, before the constitution arrived at its full perfection, the kings in person often heard and determined causes; but now, by long and uniform usage, they have delegated their whole judicial power to the judges of their several courts, whose jurisdiction is so well defined, and so clearly established, that the king can no longer resume his ancient authority, and cannot alter that of the judges without an act of parliament; and were he even to sit, personally, in the court of King's Bench, where by fiction of law, he is presumed to be always present, justice must be administered by the judges. Of these several courts, therefore, a brief description will be given, with a summary account of the officers belonging to them, and the general limits of their jurisdiction.

A court is defined to be a place wherein justice is judicially administered. For the more speedy, universal, and impartial administration of justice, the law has appointed a prodigious variety of courts, some with a more limited, others with a more extensive jurisdiction; some constituted to inquire only, others to hear and determine; some to determine in the first instance, others upon appeal, and by way of review. One distinction, runs throughout them all; *viz.* that some are *courts of record*, others

others *not of record*. A court of record is that where the acts and judicial proceedings are inrolled in parchment, for a perpetual memorial and testimony: which rolls are called the records of the court, and are of such high and supereminent authority, that their truth is not to be called in question. But if there appear any mistake of the clerk in making up such record, the court will direct him to amend it. All courts of record are the king's courts, in right of his crown and regal dignity, and therefore no other court has authority to fine or imprison; so that the very erection of a new jurisdiction with power of fine or imprisonment, makes it instantly a court of record. A court not of record, is the court of a private man; whom the law will not intrust with any discretionary power over the fortune or liberty of his fellow subjects. Such are the courts-baron incident to every manor, and other inferior jurisdictions; where the proceedings are not inrolled or recorded; but as well their existence, as the truth of the matters therein contained, must, if disputed, be tried and determined by a jury. These courts can hold no plea of matters cognizable by the common law, unless under the value of forty shillings, nor of any forcible injury whatsoever, not having any process to arrest the person of the defendant.

ECCLESIASTICAL COURTS. In giving an account of the various courts established throughout the realm, for trial and regulation of all matters whatsoever, it is thought expedient to begin with those which are called ecclesiastical, or christian.

THEIR ORIGIN. For the first three hundred years after Christ, the distinction of ecclesiastical or spiritual causes, in point of jurisdiction, did not begin; at that time no such distinction was heard of in the christian world; for the causes of testaments, matrimony, bastardy, adultery, and the rest, which are called ecclesiastical or spiritual causes, were merely civil, and determined by the rules of the civil law, and subject only to the jurisdiction of the civil magistrate. But after the emperors were become christian, out of a zeal and desire they had to grace and honour the learned and godly bishops of that time, they were pleased to single out certain special causes, wherein they granted jurisdiction to bishops; namely, in cases of tithes, because paid to men of the church; in causes of matrimony, because matrimony was for the most part solemnized in the church; in causes testamentary, because testaments were many times made *in extremis*, when churchmen were present, giving spiritual comfort to the testator, and therefore they were thought the fittest persons to take the probates of such testaments: and so of the rest. Yet these bishops did not then proceed in these causes, according to the canons and decrees of the church, (for
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the canon law was not then made) but according to the rules of the imperial law, and as the civil magistrate proceeded in other causes. Accordingly in this kingdom, in the Saxon times before the Norman conquest, there was no distinction of jurisdictions; but all matters, as well spiritual, as temporal, were determined in the county-court, called the sheriff's tourn, where the bishop and earl (or in his absence the sheriff) sat together; or else in the hundred-court, which was held in like manner before the lord of the hundred and the ecclesiastical judge. In those days the ecclesiastical officers took their limits of jurisdiction, from a like extent of the civil powers. Most of the old Saxon bishopricks were of equal bounds with the distinct kingdoms: the archdeaconries, when first settled into local districts, were commonly fitted to the respective counties; and rural deaneries, before the conquest, were correspondent to the political tithings. Their spiritual courts were held, with a like reference to the administration of civil justice. The synods of each province and diocese were held at the discretion of the metropolitan and the bishop, as great councils at the pleasure of the prince. The visitations were first united to the civil inquisitions in each county; and afterwards, when the courts of the earl and bishop were separated, yet still the visitations were held like the sheriff's tourns twice a year, and, like them too, after Easter and Michaelmas; and still with nearer likeness, the greater of them was at Easter. The rural chapters were also held, like the inferior courts of the hundred, every three weeks; then, and like them too, they were changed into monthly, and at last into quarterly meetings. Nay, and a prime invitation was held commonly, like the prime folkmote, or sheriff's tourn, on the very calends of May. The bishop and the earl sat together in one court, and heard jointly the causes of church and commonwealth, and, in all other matters, the ecclesiastical government bore an exact affinity with the temporal.

A plan so rational and moderate was wholly inconsistent with those views of ambition, that were then forming by the court of Rome. It soon became an established maxim in the papal system of policy, that all ecclesiastical persons, and all ecclesiastical causes, should be solely and entirely subject to ecclesiastical jurisdiction, which jurisdiction was supposed to be lodged, in the first place and immediately in the pope, by divine and indefeasible right and investiture from Christ himself; and derived from the pope to all inferior tribunals. Hence the canon law lays it down as a rule, that *Sacerdotes a regibus honorandi sunt, non judicandi*; and places an emphatical reliance on a fabulous tale which it tells of the emperor Constantine: that when some petitions were brought to him, imploring the aid of his
authority

authority against certain of his bishops, accused of oppression and injustice, he caused the petitions to be burnt in their presence, dismissing them with this valediction; go, and discuss your own causes among yourselves; for it would be very unfit for us to sit in judgment on the Gods.

It was not, however, till after the Norman conquest, that this doctrine was received in England; when William I. (whose title was warmly espoused by the monasteries which he liberally endowed, and by the foreign clergy, whom he brought over in shoals from France and Italy, and planted in the best preferments of the English church) was prevailed on to establish this fatal incroachment, and separate the ecclesiastical court from the civil: whether he was actuated by principles of bigotry, or by those of a more refined policy, in order to discountenance the laws of Edward, abounding with the spirit of Saxon liberty, is not altogether certain. But the latter, if not the cause, was undoubtedly the consequence of this separation; for the Saxon laws were soon overborne by the Norman justiciaries, when the county court fell into disregard by the bishop's withdrawing his presence, in obedience to the charter of the Conqueror, which prohibited any spiritual cause from being tried in the secular courts, and commanded the suitors to appear before the bishop only, whose decisions were directed to conform to the canon law. These courts, when once established, usurped considerable powers, and the priesthood long, but ineffectually, contended not merely for the exercise of the civil and canon law, but for its advancement above, or rather substitution instead of, the common law. At present, however, the authority of these courts is restrained within very narrow bounds, they are not courts of record, but evidence must be given of their sentences; they can neither fine, imprison, nor amerce; and their sole power of punishment lies in penance, which may be commuted or dispensed with for money, and in costs.

Their jurisdiction being derived from the crown of England, the last devolution is to the king, by way of appeal. Although the canon or civil law is allowed as the direction or rule of proceedings; yet that is not as if either of those laws had any original obligation in England, either as they are the laws of emperors, popes, or general councils, but only by virtue of their admission here; which is evident, for that those canons, or imperial constitutions which have not been received here do not bind; and also, for that by several contrary customs and usages in this realm, many of those civil and canon laws were restrained and controlled. Although those laws are admitted in some cases in the ecclesiastical court, yet they are but *leges sub graviore lege*;

lege; and the common laws of this kingdom have ever obtained and retained the superintendency over them.

The causes belonging to ecclesiastical courts are, blasphemy, apostacy from christianity, heresy, and schism, (but of these two, they have not been permitted to take cognizance for many years), ordinations, institution of clerks to benefices, celebration of divine service, rights of matrimony, divorces, general bastardy, tythes, oblations, obventions, mortuaries, dilapidations, reparation of churches, probate of wills, administration, simony, incest, fornication, adulteries, solicitations of chastity, pensions, procurations, &c. the cognizance whereof belongs not to the common law of England.

In the enumeration of the ecclesiastical courts it is judged convenient to begin with the lowest, and proceed to the highest, noticing some of those which are abolished or disused.

THE ARCHDEACON'S COURT. This court is holden by the archdeacon, in places where, either by prescription, or composition, he has jurisdiction in spiritual causes within his archdeaconry; he is called *oculus episcopi*, and exercises an ecclesiastical jurisdiction, either concurrently with the bishop, or exclusively. In the archdeacon's absence, the court is held before a judge appointed by himself, and called his *official*. From hence however, by statute 24 Hen. VIII. c. 12. an appeal lies to the court of the bishop.

THE CONSISTORY COURT. The consistory is the court christian, or spiritual court, held formerly in the nave of the cathedral church, or in some chapel, aisle, or portico belonging to it; in which the bishop presided, and had some of his clergy for assessors and assistants; but this court is now held by the bishop's chancellor or commissary, and by archdeacons or their officials, either in the cathedral church or other convenient place of the diocese, for the hearing and determining of matters and causes of ecclesiastical cognizance, happening within that diocese. From the consistory, the appeal is to the archbishop of the province.

THE COURT OF ARCHES. This is a court of appeal belonging to the archbishop of Canterbury; whereof the judge is called the *dean of the arches*; because he anciently held his court in the church of Saint Mary le Bow, (*Sancta Maria de arcubus*). This court is very ancient, and subsisted long before the time of king Henry II.; for Alexander III. then pope, did, by his edict, abrogate the then ancient statutes of this court, and set up others in their stead; and it was there said, that those ancient statutes were then, by length of time, become not legible. The proper jurisdiction of the dean is only over the thirteen peculiar

peculiar parishes belonging to the archbishop in London; but the office of dean of the arches, having been for a long time united with that of the archbishop's principal official, he now, in right of the last mentioned office, (as does also the official principal of the archbishop of York,) receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. And from him, by stat. 25 Hen. VIII. c. 19, an appeal lies to the king in chancery, (that is, to a court of delegates appointed under the king's great seal) he being supreme head of the English church, instead of the bishop of Rome, who formerly exercised this jurisdiction.

This court (as also the court of peculiars, the admiralty court, the prerogative court, and the court of delegates for the most part) is now held in the hall belonging to the college of civilians, commonly called Doctors' Commons.

OFFICERS. Besides the judge, there belong to the court of arches, an *Actuary*, whose duty is to attend the court, set down the judge's degrees, register the acts of the court, and send them in books to the registry; a *Register*, who is, by himself or deputy, to attend the court, receive all libels or bills, allegations, and exhibits of witnesses, file all sentences, and keep the records of the court; and a *Beadle*, who attends the court, carries a mace before the judge, and calls the person cited to appear. These, and all other offices belonging to the court, are in the gift of the archbishop of Canterbury.

PRACTICE. All process is issued in the name of the judge, and was formerly returnable before him at Bow church, but now in the common hall at Doctors' Commons. The persons practising are in this, as in the other courts at Doctors' Commons, doctors of the civil law, and proctors, of whom some account will be given in a subsequent page.

THE COURT OF PECULIARS. Peculiars are exempt jurisdictions, so called, not because they are under no ordinary, but because they are not under the ordinary of the diocese, but have one of their own. They are of several sorts; as *royal peculiars*; which are the king's free chapels, and are exempt from any jurisdiction but the king's, and therefore such may be resigned into the king's hands as their proper ordinary, either by ancient privilege or inherent right. *Peculiars of the archbishops*, exclusive of the bishops and archdeacons; which sprung from a privilege they had, to enjoy jurisdiction in such places where their seats and possessions were. *Peculiars of bishops*, exclusive of the jurisdiction of the bishop of the diocese, in which they are situated; *peculiars of bishops in their own diocese*, exclusive of archidiaconal jurisdiction. *Peculiars of deans, deans and chapters, prebendaries*, and the like; which are places wherein,

by ancient compositions, the bishops have parted with their jurisdiction as ordinaries to those societies. There are also peculiars belonging to monasteries, but the statute 31 Hen. VIII. c. 13. placed them within the jurisdiction and visitation of the ordinary, within whose diocese they are situate, or within the jurisdiction and visitation of such persons, as the king should limit and appoint.

As the persons, entitled to peculiar jurisdiction, have no known or certain registers, or public place to keep their records in, and wills are therefore liable to be lost; they are ordered by canon 126, once in every year, upon pain of being suspended from the exercise of their jurisdiction, to exhibit into the public registry of the bishop of the diocese, or of the dean and chapter, under whose jurisdiction the peculiars are, every original testament of every person in that time deceased, and by them proved, or a true copy of every such testament, examined, subscribed, and sealed by the peculiar judge and his notary.

The court of peculiars is a branch of, and annexed to, the court of arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary jurisdiction, and subject to the metropolitan only. These are seventy-five in number. All ecclesiastical causes, arising within these peculiar or exempt jurisdictions, are, originally, cognizable by this court; from which an appeal lay formerly to the pope, but now by the statute 25 Hen. VIII. c. 19. to the king in chancery.

THE PREROGATIVE COURT. The prerogative court is established for the trial of all testamentary causes, where the deceased has left *bona notabilia* within different dioceses; in which case the probate of wills belongs to the archbishop of the province, by way of special prerogative. All causes relating to the wills, administrations, or legacies of such persons, are originally cognizable here, before a judge appointed by the archbishop, called the judge of the prerogative court; from whom an appeal lies, by statute 25 Hen. VIII. c. 19. to the king in chancery, instead of the pope as formerly. If the party dying has property only in one diocese, his will may be proved, or letters of administration may be taken in the court of the bishop of that diocese; but the probate of every bishop's testament, or granting of administration of his goods, although he has not goods but within his own jurisdiction, belongs to the archbishop.

THE COURT OF DELEGATES. This is a great court of appeal created by virtue of the king's commission, which issues out of chancery upon an appeal or petition directed to him, complaining

plaining of some grievance or injury the party has suffered by the sentence or proceedings of the ecclesiastical court. Such a commission may be granted at the instance of a person interested, though not an original party in the cause. The grounds of petition are: 1. When a sentence is given in any ecclesiastical cause by the archbishop or his official. 2. When any sentence is given in any ecclesiastical cause in places exempt. 3. When a sentence is given in the admiral's court in suits civil and marine, by the order of the civil law. The commissioners are usually some of the lords spiritual and temporal, or both, and commonly one or more of the twelve judges, and one or more doctors of the civil law. They are commonly called *delegates* (according to the language of the civil and canon law), on account of the special commission or delegation they receive from the king, for the hearing and determining every particular cause; and accordingly their proceedings conform to the rules of the civil and the ecclesiastical laws; and on that account it has been particularly adjudged, that a suit there does not abate by the death of the parties: such being the course in the ecclesiastical courts; also prohibitions go to them, as to an ecclesiastical court.

THE COURT OF COMMISSION OF REVIEW. A commission of *review* is sometimes granted, in extraordinary cases, to revise the sentence of the court of delegates, when it is apprehended they have been led into a material error. This commission the king may grant, although the statutes 24 and 25 Hen. VIII. declare the sentence of the delegates definitive: because the pope, as supreme head by the canon law, used to grant such commissions of review; and such authority as the pope heretofore exerted, is now annexed to the crown by statutes 26 Hen. VIII. c. 1. and 1 Eliz. c. 1. But it is not matter of right, which the subject may demand *ex debito justitiæ*; but merely a matter of favour, and which therefore is often denied.

THE HIGH COMMISSION COURT. At a less happy period of the constitution than the present, existed a most formidable jurisdiction, but now deservedly annihilated, *viz.* the court of the king's *high commission* in causes ecclesiastical. This court was erected and united to the regal power by virtue of the statute 1 Eliz. c. 1. instead of a larger jurisdiction, which had before been exercised under the pope's authority. It was intended to vindicate the dignity and peace of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. Under the shelter of these very general words, means were found in that and the two succeeding reigns, to vest in the high commissioners extraordinary

and almost despotic powers of fining and imprisoning; which they exerted much beyond the degree of the offence itself, and frequently over offences by no means of spiritual cognizance. For these reasons this court was justly abolished by statute 16 Car. I. c. 2.; and the weak and illegal attempt that was made to revive it, during the reign of James II. served only to hasten that insatuated prince's ruin.

THE CONVOCATION. The high commission court has been expressly abolished by act of parliament, while the convocation, although not formally abrogated, has, by long intermission, fallen so completely into disuse, and even into oblivion, that no attempt to revive it is now to be expected. The convocation is of two kinds; the one a general assembly of the clergy in every diocese, by order and under sanction of the bishop, to consider of spiritual affairs locally interesting them; the other an assembly held in each province, under the superintendence of the archbishops. The former is considered equally ancient with the establishment of christianity in Britain, the latter arising out of more recent policy, but yet of very high antiquity, and generally exclusively considered when the term convocation is used. This convocation is commonly called a national synod, convened by the king's writ, directed to the archbishops of Canterbury and York, requiring them to summon every bishop, dean, and archdeacon, a proctor for the chapter, and two proctors for the clergy of each diocese in the province of Canterbury; but in York, two proctors for each archdeaconry; otherwise the number would be so small, as scarcely to deserve the name of a provincial synod. By these means the parochial clergy have as great an interest in convocation there, as the cathedral clergy, whereas in the province of Canterbury, the lower house of convocation consists of twenty-two deans, including Westminster and Windsor, twenty-four proctors of the chapters, and fifty-three archdeacons, in the whole, ninety-nine of the cathedral clergy; and there are, at the same time, only forty-four proctors for the parochial clergy. Anciently the lower clergy sat in the same house with the bishops; and in the province of York, the bishops and other clergy still sit in the same house; but in the province of Canterbury, they consist of two houses; the upper being composed of the archbishop and bishops; and the lower of the rest of the clergy. And as there are two houses of convocation, so there are two prolocutors; one of the bishops of the higher house, chosen by that house; another of the lower house, and presented to the bishops for their prolocutor. Their jurisdiction is in matters of heresy, schisms, and other mere spiritual and ecclesiastical causes, but they cannot meddle with any matters relating to the laws of the

the land, or the king's crown or dignity; and in those in which they have a jurisdiction, they are to proceed *juxta legem divinam et canones sanctæ ecclesiæ*. Such was always the law with respect to the convocation; but in consequence of the incroachments of the popish religion, it was found necessary to declare by statute 25 Hen. VIII. c. 19. that no canon, constitution, or ordinance, should be made or put in execution within this realm, by authority of convocation of the clergy, which were contrariant or repugnant to the king's prerogative royal, or the customs, laws, or statutes of this realm. In the making of new canons, the convocation was to have the king's licence, and his assent for carrying them into execution; but the old canons, if not repugnant to law, or to the king's prerogative, were allowed to continue in force,

PRIVILEGE. The clerks of the convocation, their servants and families, had such privilege in coming, tarrying, and going, as the commons called to parliament.

THE COURT OF AUDIENCE. The archbishop of Canterbury had formerly his court of audience; in which at first were dispatched all such matters, whether of voluntary or contentious jurisdiction, as the archbishop thought fit to reserve for his own hearing. They who prepared evidence, and other materials to lay before the archbishop, in order to his decisions, were called auditors. Afterwards this court was removed from the archbishop's palace, and the jurisdiction of it was exercised by the master official of the audience, who held his court in the consistory place of St. Paul's. But now the three great offices of official principal of the archbishop, dean, or judge of the peculiars, and official of the audience, are, and have been for a long time past, united in one person, under the general name of dean of the arches; who keeps his court in the hall of Doctors' Commons. The archbishop of York has, in like manner, his court of audience.

THE FACULTY COURT. The Faculty court belongs to the archbishop of Canterbury; and his officer is called master of the faculties. His power is, to grant dispensations, as to marry, to eat flesh on days prohibited, to hold two or more benefices incompatible, and such like.

JURISDICTION. In all these courts, the jurisdiction which was or is exercised, is called *contentious* or *voluntary*; but some of the courts use both.

Voluntary jurisdiction is exercised in matters which require no judicial proceeding, as in granting probates of wills, letters of administration, sequestration of vacant benefices, institution, and such like. *Contentious* jurisdiction is, where there is an action

or judicial process, and consists in the hearing and determining of causes between party and party.

OFFICERS. The principal officers, and others exercising authority or transacting business in these courts, are as follows.

ARCHDEACONS. Of these an account is given in Vol. I. page 352.

CHANCELLOR, OFFICIAL-PRINCIPAL, VICAR-GENERAL, COMMISSARY, AND OFFICIAL. The proper office of a chancellor as such, was, to be keeper of the seals of the archbishop or bishop. This office, as it is now understood, includes in it two others, which are distinguished in the commission by the titles of *official-principal* and *vicar-general*. The proper duty of an *official* is, to hear causes between party and party, concerning wills, legacies, marriages, and the like, which are matters of temporal cognizance, but have been granted to the ecclesiastical courts by the concessions of princes. The proper task of a *vicar-general* is, the exercise and administration of jurisdiction purely spiritual, by the authority and under the direction of the bishop, as visitation, correction of manners, granting institutions, and the like, with a general inspection of men and things, in order to the preserving of discipline and good government in the church. *Commissary* is he that is limited by the bishop to some certain place of the diocese, to assist him; and in most cases has the authority of official-principal and vicar-general within his limits. The chancellor is not confined to any place of the diocese, nor limited to certain causes of jurisdiction; but every where throughout the whole diocese he supplies the bishop's absence, in all matters and causes ecclesiastical; but the authority of commissaries, as it is confined to certain places of the diocese, is also restrained to certain causes of jurisdiction, limited to them by the bishops: for which reason the law calls them *officiales foranei*, as restrained *cuidam foro* only of the diocese. And what is said of commissaries may also be applied to the *officials* of such archdeacons as have a concurrent jurisdiction with the bishop.

SURROGATE. The Surrogate is the deputy to the ecclesiastical judge, and concerning such deputies the canons have established the following principles. No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction, shall substitute, in their absence, any to keep court for them, except he be either a grave minister and a graduate, or a licensed public preacher, and a beneficed man near the place where the courts are kept, or a bachelor of law, or a master of arts at least, who has some skill in the civil and ecclesiastical law, and is a favourer of true religion, and a man of
modest

modest and honest conversation; under pain of suspension, for every time that they offend therein, from the execution of their offices for the space of three months *toties quoties*: and he likewise that is deputed, being not qualified as is before expressed, and yet shall presume to be a substitute to any judge, and shall keep any court as aforesaid, shall undergo the same censure. And by the statute 26th Geo. II. c. 33. no surrogate deputy of any ecclesiastical judge, who has power to grant licences of marriage, shall grant any such licence, before he has taken an oath before the said judge, faithfully to execute his office according to law, to the best of his knowledge; and has given security by his bond in the sum of 100*l.* to the bishop of his diocese, for the due and faithful execution of his office.

ADVOCATE. None are allowed to be advocates and plead in these courts, but doctors of the civil law in one of the universities of England; who, upon their petition to the archbishop of Canterbury, and his fiat obtained, are admitted by the judge of the court, upon condition not to practise for one whole year after such admittance. The manner of their admittance is this: The two senior advocates, in their scarlet robes, with the mace before them, conduct the new advocate up to the court, with three low reverences, and present him with a short Latin speech, and the rescript of the archbishop; then the oaths of allegiance, supremacy, and some other prescribed in the statute of arches, being taken, he is admitted by the judges, and a place and seat in the court assigned to him, either *à dextris*, or *sinistris*, which he is always to keep when he pleads. The judge, and all the advocates in this court, always wear their scarlet robes, with hoods lined with taffety, if they are of Oxford, or white miniver fur, if of Cambridge, and round black velvet caps; and the proctors wear, or ought to wear, hoods lined with lambs-skin, if not graduates; but if graduates, hoods proper to their degree. For the furtherance and increase of learning, and the advancement of civil and canon law, it is ordained, that no proctor, exercising in any of the archbishop's courts, shall entertain any cause, whatsoever, and keep and retain the same for two court days, without the counsel and advice of an advocate, under pain of a year's suspension from his practice: neither shall the judge have power to release or mitigate the said penalty without express mandate and authority from the archbishop. No judge in any of these courts may admit any libel or any other matter, without the advice of an advocate admitted to practise in the court, or without his subscription; neither can any proctor conclude any cause depending, without the knowledge of the advocate retained and feed in the cause: which if any

proctor does, or procures to be done, or if, by any colour whatsoever, he defrauds the advocate of his duty or fee, or is negligent in repairing to the advocate, and requiring his advice what course is to be taken in the cause; he is to be irrevocably suspended from all practice for the space of six months.

REGISTER. The general duty of the register has already been mentioned in treating of the court of arches. No chancellor, commissary, archdeacon, official, or any other person using ecclesiastical jurisdiction, can speed any judicial act, either of contentious or voluntary jurisdiction, except he is the ordinary register of that court, or his lawful deputy; or if he or they will not or cannot be present, then it is to be done by such persons as by law are allowed in that behalf to write or expedite the same, under pain of suspension *ipso facto*. If any register, or his deputy or substitute, receives any certificate without the knowledge and consent of the judge of the court; or willingly omits to cause any person cited to appear upon any court day to be called; or unduly puts off and defers the examination of witnesses to be examined by a day set and assigned by the judge; or does not obey and observe the judicial and lawful monition of the said judge; or omits to write or cause to be written such citations and decrees as are to be put in execution and set forth before the next court day; or does not cause all testaments exhibited into his office to be registered within a convenient time; or sets down or enacts, as decreed by the judge, any thing false or concealed by himself, not so ordered or decreed by the judge; or if, in the transmission of processes to the judge *ad quem*, he adds or inserts any falsehood or untruth, or omits any thing, either by cunning or by gross negligence; or in causes of instance, or promoted of office, receives any reward in favour of either party; or is of counsel directly or indirectly with either of the parties in suit, or in the execution of their office; or does aught else maliciously, or fraudulently, whereby the ecclesiastical judge or his proceedings may be slandered or defamed: the said register, or his deputy or substitute, offending in all or any of the premises, is by the bishop of the diocese to be suspended from the exercise of his office for the space of one, two, or three months or more, according to the quality of his offence; and the said bishop may assign some other public notary to execute and discharge all things pertaining to his office, during the time of his suspension.

NOTARY PUBLIC. A notary was anciently a scribe, that only took notes or minutes, and made short drafts of writings and other instruments, both public and private; but at this day, he

he is called a notary public, who confirms and attests the truth of any deeds or writings, in order to render the same authentic. The law books give to a notary several names or appellations; as, *actuarius*, *registrarius*, *scriniarius*, and such like, all which words are put to signify one and the same person; but in England, the word *registrarius* is confined to the officer of some court, who has the custody of the records and archives, and is oftentimes distinguished from the *actuary* thereof; but a register ought always to be a notary public; for that seems to be a necessary qualification of his office. A notary public is appointed to his office by the archbishop of Canterbury; who in the instrument of appointment decrees, that "full faith be given, as well in as out of judgment, to the instruments by him to be made;" which appointment is also to be registered and subscribed by the clerk of his majesty for faculties in chancery. A notary on his appointment must swear "that he will faithfully exercise the office of notary public; that he will faithfully make contracts, wherein the consent of parties is required, by adding or diminishing nothing, without the will of the parties, that may alter the substance of the fact; that if in making any instrument the will of one party only is required, he will in such case add or diminish nothing that may alter the substance of the fact, against the will of such party; that he will not make instruments of any contract, in which he shall know there is a violence or fraud; that he will reduce contracts into an instrument or register; and after he shall have so reduced the same, that he will not maliciously delay to make a public instrument thereupon, against the will of him or them, on whose behalf such contract is to be so drawn: saving to himself his just and accustomed fees. The business of a notary is however extended beyond the limits of the ecclesiastical courts to many mercantile and public transactions; and as the frequency of these, and the allurements of fees easily to be obtained, induced many to get themselves admitted who had neither knowledge nor experience to recommend them, the legislature has found it necessary to enact, that in future no one shall be admitted a notary who has not served to some other notary a clerkship under articles for five years; and to make every one who practises take out an annual licence on a stamp of ten pounds.

PROCTOR. Proctors are officers established to represent in judgment the parties who empower them, by warrant under their hands called a *proxy*, to appear for them, to explain their rights, to manage and instruct their cause, and to demand judgment. No proctor in any court can be a justice of the peace, during such time as he continues in practice; and during

during that time he also takes out an annual licence of ten pounds.

APPARITOR. Apparitors, so called from that principal branch in their office which consists in summoning persons to appear, are appointed to execute the proper orders and decrees of the court, and are chosen by the ecclesiastical judges respectively, who may suspend them for misbehaviour, but may not remove them at discretion, as most of them hold their offices by patent. The proper business and employment of an apparitor is, to attend in court; to receive the commands issued by the judge; to convene and cite the defendants into court; to admonish or cite the parties in the production of witnesses and the like; and to make due return of the process by him executed. The process of courts is not to be sent by those who obtain them, nor by their messenger, but the judge is to send it by his own faithful messenger, at the moderate expence of the person suing it out; or at least the citation must be directed to the dean of the deanery where the party to be cited dwells, who, at the judge's command, must faithfully execute the same by himself, or his certain and trusty messenger.

DOCTORS COMMONS. Doctors' Commons is the college of civilians in London, which was purchased by Dr. Harvey, dean of the arches, for the professors of the civil law. It is situated in the parish of Saint Benedict, Paul's-wharf, London, the principal entrance being to the south-west of Saint Paul's Cathedral. It appears, that the fee simple was not obtained till the year 1783, when the dean and chapter of Saint Paul's, to whom the site originally belonged, vested the freehold in the doctors, in consideration of 105*l.* per annum, clear of all taxes. Here commonly reside the judge of the arches court of Canterbury, the judge of the admiralty, and the judge of the prerogative court of Canterbury, with divers other eminent civilians; who there living in a collegiate manner, and communing together, it is known by the name of Doctors' Commons. It was burnt down in the fire of London, and rebuilt at the charge of the profession.

COURTS MILITARY. No court of this kind is permanent, except

THE COURT OF CHIVALRY; of which an account is given, Vol. I. page 492.

MARITIME COURTS. Maritime courts are such as have the power and jurisdiction to determine all maritime injuries, arising upon the seas, or in parts out of the reach of the common law; they are only the court of admiralty and its courts of appeal.

THE COURT OF ADMIRALTY. This court takes cognizance

zance of all maritime causes or matters arising upon the high sea; and its jurisdiction is derived from the king, who protects his subjects from piracy and all other injuries, and who has a dominion over all the British seas; this jurisdiction he exercises by the lord-high-admiral, or those lawfully deputed for that purpose. The jurisdiction of the admiralty is twofold, and holden before distinct tribunals: the one is the ordinary court for deciding controversies relating to contracts made at sea, and is called the *instance court*; the other determines the right to maritime captures and seizures, and is called the *prize court*. The jurisdiction in both is exercised by the same person, who is appointed judge of the admiralty, by a commission under the great seal, which enumerates particularly, as well as generally, every object of his jurisdiction; but makes no mention of prize. To constitute that authority, or to call it forth, in every war, a commission, under the great seal, issues to the lord high admiral, to will and require and authorise the court of admiralty, and the lieutenant and judge of the said court, his surrogate or surrogates, to proceed upon all manner of captures, seizures, prizes, and reprisals of ships and goods, that are or shall be taken; and to hear and determine, according to the course of the admiralty, and the law of nations; and a warrant issues to the judge accordingly.

JURISDICTION. It is laid down as a general rule, in the common law books, that the admiral's jurisdiction is confined to matters arising on the high seas only, and that he cannot take cognizance of contracts, &c. made or done in any river, haven, or creek, within any county; and that all matters arising within these are triable by the common law. But it has been resolved, that between the high and low water mark the common law and admiralty have a divided authority; that is to say, the one when it is not, and the other when it is, covered with water; and that the soil, upon which the sea flows and reflows, may be parcel of a manor. The admiralty court has jurisdiction, where a ship founders or is split at sea, over the goods which become *flotsam*, *jetsam*, or *ligan*; and a suit for these must be in that court; but goods wrecked must be claimed by action at common law. But it has no jurisdiction as to contracts made at land, whether such contracts be made here or in foreign parts. Mariners may sue in the admiralty court for their wages, although the hiring was by the master on land; and this is allowed of in favour of navigation, for here they may all join in the same libel; also, by the admiralty law they have remedy against the ship and owners, as well as against the master; and it would be a great discouragement

ment to seafaring men, to oblige them to bring separate actions, and those against a master, who may happen to be insolvent.

PROCEEDINGS. All maritime affairs are regulated chiefly by the civil law, the *Rhodian* laws, the laws of *Oleron*, or by certain peculiar municipal laws and constitutions appropriated to certain cities, towns and counties bordering on the sea. As the proceedings in the admiralty are, according to the method of the civil law, like those of the ecclesiastical courts, it is usually held at the same place with the superior ecclesiastical courts, at Doctors' Commons in London. It is no court of record, any more than the spiritual courts.

APPEALS. From the sentences of the admiralty judge an appeal always lay, in ordinary course, to the king in chancery, as may be collected from the statute 25 Hen. VIII. c. 19. which directs the appeal from the archbishop's courts to be determined by persons named in the king's commission, "like as in case of appeal from the admiral court." This is also expressly declared, by statute 8 Eliz. c. 5. which enacts, that upon appeal made to chancery, the sentence definitive of the delegates appointed by commission shall be final. Appeals from the vice-admiralty courts in America, and our other plantations and settlements, may be brought before the courts of admiralty in England, as being a branch of the admiral's jurisdiction, though they may also be brought before the king in council; but in case of prize vessels, taken in time of war, in any part of the world, and condemned in any courts of admiralty or vice-admiralty as lawful prize, the appeal lies to certain commissioners of appeals, consisting chiefly of members of the privy council, and not to judges delegates. And this by virtue of divers treaties with foreign nations, by which particular courts are established in all the maritime countries of Europe for the decision of the question, whether lawful prize or not: for this being a question between subjects of different states, it belongs entirely to the law of nations, and not to the municipal laws of either country, to determine it. The original court, to which this question is submitted in England, is the court of admiralty; and the court of appeal is in effect the king's privy council, the members of which are, in consequence of treaties, commissioned under the great seal for this purpose.

OFFICERS. In the admiralty court is a judge, whose salary is 2500*l.* a-year. There are also a *king's advocate-general*, and an *advocate-general for the admiralty*; a *solicitor* to the admiralty and navy; a *king's proctor*, and an *admiralty proctor*. To the court belong a *register* with *deputies*, a *marshal* and *deputy*. There is also a *judge-advocate* of the fleet, who has

has ten shillings per day, and his *deputy* eight shillings. At Halifax, a judge of the vice-admiralty court is established, with an annual salary of 2000*l*.

COURTS OF SPECIAL JURISDICTION. The courts already mentioned, although not courts of record, are considered as of general jurisdiction, tending to redress all possible injuries, so far as their powers extend; but there are other courts, which it will be fit to mention before the highest are treated of, whose jurisdiction is private and special, confined to particular spots, or instituted only to redress particular injuries. These courts are numerous, and divided into several branches, each having a certain portion of dignity or utility, and of each it will be necessary to give some account.

FOREST COURTS. A forest is described to be a certain territory of woody grounds, and fruitful pastures, privileged for wild beasts and fowls of forest, chase, and warren, to arrest and abide there in the safe protection of the king, for his delight and pleasure, which territory of ground so privileged, is meted and bounded with unremoveable marks, meets, and boundaries, either known by matter of record, or by prescription, and also replenished with wild beasts of venary or chase, and with great coverts of vert for the succour of the said beasts there to abide; for the preservation and continuance of which place, together with the vert and venison, there are particular officers, laws, and privileges belonging to the same, requisite for that purpose, and proper only to a forest, and to no other place. Before the statute of *charta de foresta*, the king used to convert the open and woody grounds of his subjects into forests; but though at this day he may make a forest, yet he cannot afforest any of his subjects' land. All the forests which were made after the conquest, except New Forest in Hampshire, created by William the Conqueror, were disafforested by the *charta de foresta*. The forest of Hampton Court was established by the authority of parliament in the reign of Henry VIII. The courts of the forest are those of attachments or woodmote; of regards, of swainmote, and of justice seat.

COURT OF ATTACHMENTS. The court of *attachments*, *woodmote*, or *forty-days court*, is to be held before the verderors of the forest once in every forty days; and is instituted to inquire into all offenders against vert and venison; who may be attached by their bodies, if taken with the mainour, (or *mainœuvre*, a *manu*;) that is in the very act of killing venison or stealing wood, or preparing so to do, or by fresh and immediate pursuit after the act is done; else they must be attached by their goods. In this forty days court, the foresters or keepers are to bring in their attachments, or presentments *de viridi et venatione*; and the verderors are to receive the same, and to enrol and certify them

them under the seals to the court of justice seat, or swainmote : for this court can only inquire of, but not convict offenders.

COURT OF REGARDS. The court of *regard*, or survey of dogs, is to be holden every third year, for the lawing or expeditation of mastiffs, which is done by the cutting off the claws and ball (or pelote) of the fore-feet, to prevent them from running after deer. No other dogs but mastiffs are to be thus lawed or expeditated, for none other were permitted to be kept within the precincts of the forest ; it being supposed that the keeping of these, and these only, was necessary for the defence of a man's house.

COURT OF SWAINMOTE. The Swainmote is holden before the verderors as judges by the steward of the swainmote, thrice in every year, the swains or freeholders within the forest composing the jury. The principal jurisdiction of this court is, first, to inquire into the oppressions and grievances committed by the officers of the forest ; *de superoneratione forestariorum, et aliorum inferiorum foresta : et de eorum oppressionibus populo regis illatis.* And, secondly, to receive and try presentments certified from the court of attachments, against offences in vert and venison. This court may not only inquire, but also convict, which conviction must be certified to the court of justice seat under the seals of the jury ; for this court cannot proceed to judgment.

COURT OF JUSTICE SEAT. This court is so incident to a forest, that there cannot be a forest without it, but it cannot be holden oftener than every third year. It must be summoned at least forty days before sitting, and one writ of summons must be directed to the sheriff of the county in which the forest is situate, the other to the keeper of the forest or his deputy, to convoke all officers, &c. and all persons that claim liberties within the forest, to shew how they claim them. This court may inquire, hear, and determine all trespasses within the forest, according to the law of the forest, and all claims of franchises, &c. within the forest. The proceedings are *de bona in bonam*, and therefore the defendant must plead to an indictment instantly. A felony committed within the forest must be inquired of and tried before the judges of the common law, for it belongs not to the cognizance of the chief justice of the forest.

OFFICERS. To these courts there belong several officers, of which the principal are as follow :

JUSTICES IN EYRE. In mentioning the justices in eyre of the forest, it is necessary to premise that in ancient times there were other officers who bore that title. They were said to be constituted by the parliament of Northampton, in the twenty-second year of Henry II. in 1176, but it is rather considered that they had been previously established, and only then had new circuits

circuits appointed. They were invested with a delegated power from the king's great court, or *aula regia*, being looked upon as members thereof: and they afterwards made their circuit round the kingdom once in seven years, for the purpose of trying causes. They were afterwards directed by *magna charta*, c. 12. to be sent into every county once a year, to take (or receive the verdict of the jurors or recognitors in certain actions, then called) recognitions or assizes; the most difficult of which they are directed to adjourn into the court of common pleas, to be there determined. These itinerant justices were sometimes mere justices of the assize, or of dower, or of gaol delivery, and the like; and they had sometimes a more general commission, to determine all manner of causes, being constituted *justiciarii ad omnia placita*. They were constituted, at first, by writ in the nature of a commission, but afterward in pursuance of a statute, 27 Henry VIII. c. 24. by letters patent under the great seal; their authority was at one period very transcendent, but they are now superseded by the justices of assize.

The justices in eyre of the forest still continue according to the original institution. They are appointed by the king's commission, one to exercise his authority south, the other north of the Trent. The places are considered as sinecures; the salary of the chief justice south of the Trent is 3466*l.* 13*s.* 4*d.* and the chief justice north of Trent has 2450*l.*

VERDEROR. In every forest there are usually four verderors, so named *a viridi*, or *vert*. The verderor is a judicial officer of the forest, chosen by force of the king's writ in full county, and sworn to maintain the laws of the forest, and to view, receive, and enrol the attachments, and presentments of all trespasses within the forest, of vert and venison.

REGARDER. The regarder or ranger, is a ministerial officer of the forest, sworn to make regard there as usual, to view and inquire of all offences within the forest in *vert* or venison, and of concealments, or defaults of the foresters, or other officers of the forest. And he is made by the king's patent, or by the chief justice in eyre, or upon a writ to the sheriff to make a regard of the forest; he is also chosen in the county court.

FORESTER. The forester is an officer sworn to preserve the vert and venison within his walk, to guard the vert and venison there, not to conceal but to attach all offenders, and to present the offences and attachments at the next court of attachments, or swainmote; to ride with the king, and conduct him in his hunting; and to take care of the lawing of the dogs. The forester may arrest any man who kills or chases any deer within the forest, if he be taken with the mainour within the forest, or be indicted before the swainmote, and may detain him till he

find pledges to appear before the justice in eyre; but if he offer sufficient pledges, he ought not to be imprisoned.

WOODWARD. A subject, who has land within a forest, according to usage, ought to have a woodward; and if he does not appear at the justice seat, the wood may be seized into the king's hands, till he make fine, and replevy it; and if he do not replevy it within a year, it shall remain in the king's hands for ever. If wood, part of the king's demesne within a forest, be demised to another for years, the lessee must find a woodward; and if he does not appear, the wood and office may be seized. And after seizure, no claim of the owner can be heard till he replevy the woods.

AGISTOR. The agistor is an officer whose duty is to present trespasses made by beasts in the forest.

If all these officers continue to be appointed, it must be observed that their employments are become of little consideration in the eye of the law. The last court of justice-seat of any note, was that holden in the reign of Charles I. before the earl of Holland, being one of the expedients devised by that unhappy prince to obtain a revenue independent of parliament. After the restoration another was held *pro forma* only, before the earl of Oxford; but since the era of the revolution in 1688, the forest laws have fallen into total disuse, to the great advantage of the subject.

COURT OF COMMISSIONERS OF SEWERS. Another species of restricted courts is that of commissioners of sewers. By the common law, the king used to grant commissions under the great seal for inquiring into the want of reparations of sea walls, ditches, gutters, sewers, &c. but these matters are now regulated according to several acts of parliament. These temporary tribunals are erected at the discretion and nomination of the lord chancellor, lord treasurer, and chief justices, pursuant to the statute 23 Hen. VIII. c. 5. Their jurisdiction is to overlook the repairs of sea-banks and sea-walls; and the cleansing of rivers, public streams, ditches, and other conduits, whereby any waters are carried off: and is confined to such county, or particular district, as the commission shall expressly name. The commissioners are a court of record, and may fine and imprison for contempts; and in the execution of their duty may proceed by jury, or upon their own view, and may take order for the removal of any annoyances, or the safeguard and conservation of the sewers within their commission, either according to the laws and customs of Romney-marsh*, or otherwise at their own discretion. They

* Romney-marsh in the county of Kent, a tract containing 24,000 acres, is governed by certain ancient and equitable laws of sewers, composed by Henry de Bathe, a venerable judge in the reign of Henry III.; from which laws all commissioners of sewers in England may receive light and direction.

may also assess such rates or scots upon the owners of lands within their district, as they shall judge necessary: and if any person refuses to pay them, the commissioners may levy the same by distress of his goods and chattels: or they may, by statute 23 Hen. VIII. c. 5. sell his freehold lands (and by the 7 Anne, c. 10. his copyhold also,) in order to pay such scots or assessments. But their conduct is under the controul of the court of King's Bench, which will prevent or punish any illegal or tyrannical proceedings. In the reign of James I. indeed, the privy council endeavoured to abridge the authority of the court of King's Bench in this respect, and one of the reasons for discharging Sir Edward Coke from his office of lord chief justice, was the countenance he gave to those who appealed to the court of law. The privy council vindicated their proceeding by alleging the necessity of unlimited powers in works of evident utility to the public, "the supreme reason above all reasons, which is the salvation of the king's lands and people." But now it is clearly held, that this (as well as all other inferior jurisdictions) is subject to the discretionary coercion of the court of king's bench.

THE COURT OF POLICIES OF INSURANCE. This court, when subsisting, is erected in pursuance of the statute 43 Eliz. c. 12. which recites the immemorial usage of policies of insurance, "by means whereof it cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavy upon few, and rather upon them that adventure not, than upon those that do adventure: whereby all merchants, especially those of the younger sort, are allured to venture more willingly, and more freely: and that heretofore such assurers had used to stand so justly and precisely upon their credits, as few or no controversies had arisen thereupon; and if any had grown, the same had from time to time been ended and ordered by certain grave and discreet merchants, appointed by the lord-mayor of the city of London; as men, by reason of their experience, fittest to understand and speedily decide those causes:" but that of late years divers persons had withdrawn themselves from that course of arbitration, and had driven the assured to bring separate actions at law against each insurer: it therefore enables the lord chancellor yearly to grant a standing commission to the judge of the admiralty, the recorder of London, two doctors of the civil law, two common lawyers, and eight merchants; any three of whom, one being a civilian or a barrister, are thereby, and by the statute 13 and 14 Chas. II. c. 23., empowered to determine in a summary way all causes concerning policies of

assurance in London, with an appeal (by way of bill) to the court of chancery. But the jurisdiction being somewhat defective, as extending only to London, and to no other assurances but those on merchandize, and to suits brought by the assured only, and not by the insurers, no such commission has of late years issued : but insurance causes are now usually determined by the verdict of a jury of merchants, and the opinion of the judges in case of any legal doubts ; whereby the decision is more speedy, satisfactory, and final : though, as Mr. Justice Blackstone, from whose commentaries these particulars are derived, observes, it is much to be wished that some of the parliamentary powers invested in these commissioners, especially for the examination of witnesses, either beyond the seas, or speedily going out of the kingdom, could at present be adopted by the courts of Westminster hall, without requiring the consent of parties.

THE MARSHALSEA AND PALACE COURT. The court of the Marshalsea, and Palace-court at Westminster, though two distinct courts, are frequently confounded together. The former was originally holden before the steward, and marshal of the king's house, and was instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service. It was formerly held in, though not a part of, the *aula regis* ; and, when that was subdivided, remained a distinct jurisdiction, holding plea of all trespasses committed within the verge of the court, where only one of the parties was in the king's domestic service, in which case the inquest was to be taken by a jury of the country ; and of all debts, contracts, and covenants, where both the contracting parties belonged to the royal household ; and then the inquest was composed of men of the household only. By the statute 13 Rich. II. st. 1. c. 3. (in affirmance of the common law) the verge of the court in this respect extends twelve miles round the king's place of residence ; and as this tribunal was never subject to the jurisdiction of the chief justiciary, no writ of error lay from it (though a court of record) to the King's Bench, but only to parliament, till the statutes of 5 Edw. III. c. 2 and 10 Edw. III. st. 2. c. 3. which allowed such writ of error before the king in his place. But this court being ambulatory, and obliged to follow the king in all his progresses, so that, by removal of the household, actions were frequently discontinued, and doubts having arisen as to the extent of its jurisdiction, Charles I. in the sixth year of his reign, by letters patent, erected a new court of record, called *curia palatii*, or the *palace court*, to be held before the steward of the household and knight marshal, and the steward of the court or
his

his deputy; with jurisdiction to hold plea of all manner of personal actions whatsoever, which should arise between any parties within twelve miles of his majesty's palace at Whitehall. The court is now held once a week, together with the ancient court of Marshalsea, in the borough of Southwark; and a writ of error lies from thence to the court of King's Bench. If the cause is of any considerable consequence, it is usually removed on its first commencement, together with the custody of the defendant, either into the king's bench or common pleas, by a writ of *habeas corpus cum causa*. Actions in this court are generally brought in the following cases: first when the debt or damages to be recovered are not thought sufficiently considerable to warrant the party in incurring the expence of bringing them in the superior courts, as in actions not amounting to five pounds. Secondly, where the plaintiff wishes to avoid delay, particularly during the vacations of the superior courts; for here the continuances are from week to week without any vacations, and judgment is generally had in three or four weeks. Thirdly, in actions of trespass or assault, where the plaintiff wishes to avoid the risk of paying costs, as in this court he is intitled to his costs upon obtaining a verdict even for the smallest sum, as the statute 22 and 23 Chas. II. c. 9., which takes away costs in those actions unless the jury shall give forty shillings damages, does not extend to inferior courts, and was enacted for the purpose of confining those small actions to the inferior courts. Fourthly, when it is apprehended that several other writs may have been issued against a defendant, which, altogether, he may not be able to pay or bail, as a defendant arrested by process from this court, may be discharged on paying or bailing the debt for which he is arrested, without being subject to other detainers.

OFFICERS. The judges who preside in this court are, the *lord steward of the household*, the *knight-marshal* and his *deputy*, the *steward of the court* and his *deputy*, which last is generally a barrister or serjeant at law, and in fact presides in court. The chief processes are issued from the office of a *prothonotary* of the court, in Clifford's Inn, who transacts the business by a deputy. There are in the court four counsel, whose appointments are held by patent, and transferred by purchase; other counsel may be brought into the court to plead, but in every cause an advocate regularly belonging to the court must be engaged on each side, and they take the business by rotation. The causes are conducted before they come into court by six attorneys, who alone are allowed to practise, and the process is executed by officers who are appointed by, and give security to, the knight-marshal for the time being.

COURTS OF THE PRINCIPALITY OF WALES. Another species of private courts of a limited, though extensive jurisdiction, are those of the principality of Wales : which, upon its thorough reduction, and the settling of its polity in the reign of Henry VIII. were erected all over the country ; principally by statute 34 and 35 Hen. VIII. c. 26. though much had before been done, and the way prepared by the statute of Wales, 12 Edw. I. and other acts. By that of Henry VIII. before mentioned, courts-baron, hundred, and county-courts, are there established, as in England. A session is also to be held twice in every year, in each county, by judges appointed by the king, to be called the great sessions of the several counties in Wales ; in which all pleas of real and personal actions shall be held, with the same form of process, and in as ample a manner, as in the court of common pleas at Westminster : and writs of error lie from judgments therein (it being a court of record) to the court of King's Bench at Westminster. But the ordinary original writs of process of the king's courts at Westminster do not run into the principality of Wales ; though process of execution does ; as do also prerogative writs, as writs of *certiorari*, *quo minus*, *mandamus*, and the like. And even in causes between subject and subject, to prevent injustice through family factions or prejudices, it is held lawful (in causes of freehold at least, and it is usual in all others) to bring an action in the English courts, and try it in the next English county adjoining to that part of Wales where the cause arises, and wherein the venue is laid. But, on the other hand, to prevent trifling and frivolous suits, it is enacted by statute 13 Geo. III. c. 51. that in *personal* actions, tried in any English county, where the cause of action arose, and the defendant resides in Wales, if the plaintiff shall not recover a verdict for ten pounds, he shall be nonsuited, and pay the defendant's costs, unless it be certified by the judge, that the freehold or title came principally in question, or that the cause was proper to be tried in such English county. And if any transitory action, the cause whereof arose and the defendant is resident in Wales, is brought in any English county, and the plaintiff does not recover a verdict for ten pounds, the plaintiff will be nonsuited, and pay the defendant's costs, deducting thereout the sum recovered by the verdict.

JUDGES. The principality is divided into four sessions, in each of which preside a chief justice and a second judge. The sessions include the counties in the following order. 1. The *Chester circuit*, including Chester, Montgomery, Denbigh, and Flint. 2. The *North Wales circuit* ; Anglesea, Caernarvon, and Merioneth. 3. The *South Wales circuit* ; Caermarthen, Pembroke,

Pembroke, and Cardigan. 4. The *Brecon circuit*; Brecon, Radnor, and Glamorgan.

COURT OF THE DUCHY OF LANCASTER. The court of the duchy-chamber of Lancaster, is another special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster: which is a thing very distinct from the county palatine, (which has also its separate chancery for sealing of writs, and the like,) and comprizes much territory, which lies at a vast distance from it; as particularly a large district surrounded by the city of Westminster. The proceedings in this court are the same as on the equity side in the courts of exchequer and chancery; so that it seems not to be a court of record: and indeed it has been holden that those courts have a concurrent jurisdiction with the duchy court, and may take cognizance of the same causes.

RISE AND PROGRESS OF ITS JURISDICTION. As the existence of this court is connected with some interesting periods of the British history, and its origin and progress are little known, the following account is offered.

The honour of Lancaster was of the most remote antiquity. It was composed of a number of honours, long before it was raised to an earldom, as it was subsequently to a dukedom.

The first possessor whom it is material to mention was Roger of Poitou, who was deprived for disloyalty, which he probably inherited from his father Roger de Montgomery, who got Arundel, Chichester, and the county of Salop, from William I. and rebelled against William II.

William earl of Montaigne Surry and Warren, third son of king Stephen, was next appointed lord of the honour of Lancaster, and put in possession of other considerable estates by his father; but Henry II. resumed what this royal earl held of the crown, and left him what came from his father before his father was king.

The third possessor was John, surnamed Sans-terre, afterward king of England. His brother Richard I. not weighing, as his father did, prudence against generosity, rendered him, who from ambition was too desirous of dominion, powerful by territories. After king John, the honour of Lancaster was raised to an earldom. Peter of Savoy, uncle to queen Eleonora, wife of Henry III. was created by that king earl of Lancaster. John his predecessor was indeed, in the enumeration of his titles, called earl of Lancaster, as a king's son, they being by the ancient laws of the crown, as is reported, earls of course, without any particular creation or investiture. Sir William Fleetwood, in
his

his manuscript history of the duchy, says, there is a natural and an artificial earl. A king's son was of the first sort. Selden further defines this title to be local and personal. Part of the territories belonging to this earldom lay near the New Temple in London. It was called a Vavaforie; here the said earl Peter built a house, and named it from his own country, "Savoy." His son being deemed an alien, the earldom escheated to the crown, and Henry III. conferred it on his son Edmond, called "Crouchback," probably from his wearing a crouch or cross on his back, as was often done by votaries to pilgrimage. From this prince is descended the royal house of Lancaster, rival to that of York.

Edmond was succeeded by Thomas, his eldest son, who was sheriff of Lancaster by inheritance. He was made chief of Edward II.'s privy council, but after many mutual disgusts and reconciliations, he took up arms against him, or rather against the Spencers, was defeated at Borough-bridge, and beheaded at Pontefract, after he had undergone the scoffs of the royalists for taking, as it was pretended he did, in a letter to the Scotch, the title of king Arthur. Never from the conquest to that time was the nation stained with more blood from the scaffold, than what flowed on his defeat. It was soon revenged; the Spencers and the king himself fell. The earl was defamed by his adversaries, as an adulterer, a perverter of justice, and cruel. By the populace, and many clergy, he was canonized. The contradiction might arise from his having been an enemy to favourites, and a friend to the church. His person was contemptuously treated, but his picture was worshipped at Saint Paul's. His miracles were suppressed; but his attainder was reversed in the 1st of Hen. IV. he having been condemned without the form of a trial by his peers. He married Alice, daughter of Henry de Lacy earl of Lincoln, and added in her right the estates of Lincoln and Salisbury to his immense patrimony; but she, perfect in figure, was afterwards claimed by a deformed dwarf, Richard Saint Martin, who, by her confession of the infamous connexion, and by court encouragement and support (this Saint Martin being a retainer to the earl of Surry), demanded, some authors say obtained, the earldoms of Lincoln and Salisbury, to the great diminution of the earl's power and fortune. The affront indubitably inflamed his disaffection.

His brother Henry became intitled to such parts only of his possessions and honours, as had been settled on him by the king, in case the last earl should die without issue, which he did; and though the king afterwards considerably increased his estates by grant, yet he kept the greater share of the property of the late earl,

earl, which had been forfeited by his attainder. Henry further increased his estate by a large fortune with his wife Maud, heiress to her father Sir Patrick Chaworth, and to other relations; by which acquisitions the earls of Lancaster grew very considerable in Wales.

His son Henry, who had been created earl of Derby and Lincoln in his father's lifetime, succeeded to his estates and honours. He added dignity to his illustrious family. He was the first duke of Lancaster and the second of our nobility raised to the ducal title. The duke of Cornwall stood before him. By his patent of creation in the 25th of Edward III. the king erected the county of Lancaster into a palatinate, and granted the duke *jura regalia* in that county, and many other privileges. The grant by this charter was only for his life; so all these distinctions, with his dukedom, ceased at his death in 1361. In the twenty-fifth year of his reign, the duke obtained, in exchange for Richmondshire, divers large domains in the counties of York, Durham, Nottingham, Derby, Sussex, and Norfolk. But shortly before his death, which happened the 23d of March, 1361, he surrendered many of his liberties and privileges to the crown, which were afterwards granted to John of Gaunt.

John of Gaunt married Blanch, daughter of the preceding nobleman, and made the house of Lancaster more royal. Maud, her eldest sister, dying without issue, all the Lancaster estates devolved to this prince, who was first created earl, and afterwards duke of Lancaster, by his father Edward III.; which king, the 28th February, in the fifty-first year of his reign, instituted, for the higher dignity of his son, a chancery, justices for the pleas of the crown, as well as for common law, *jura regalia*, and power of execution of writs and offices, and all other powers which were exerted by the earl of Chester in his county palatine. In the 13th of Richard II. duke John petitioned the king and parliament at Gloucester, that the late king's grant to him might be extended to his heirs male; and the king by charter, with the assent of parliament, extended it according to the prayer of the petition. He also obtained from Richard a grant and release of all the forfeited estates which came to the crown by the attainder of Thomas, earl of Lancaster. This duke had his council in Lancashire before the grant to him of *jura regalia*, and in the grants and leases from the duke it is styled the "Thrice noble council of the" "thrice noble duke of Lancaster, &c." His council also took cognizance of title of land there, before the last foundation or confirmation of the palatinate. He married, after the

death of Blanch, Constantia daughter of Peter king of Castille, and took his father-in-law's title, but ceded it afterward by contract, and was, by act of parliament, created duke of Aquitaine. His recited titles are, son of the king, duke of Aquitaine and Lancaster, earl of Derby, Lincoln, and Leicester. His estates were greatly augmented by his father, who, in the fiftieth year of his reign, granted to him and his heirs large domains in Hertfordshire, and at Calais in France. As his royal alliances and estates exceeded those of any other subject, so perhaps, in many respects, did his merits. He was temperate and courageous; neither too negligent nor too ambitious of glory. He was, however, in 1381, so much the object of popular odium, though he differed from an unpopular king, that Jack Straw burnt his castle, the Savoy. His benefactions to the church did not procure him the favour of the clergy; they thought he wanted zeal; some suspected his orthodoxy; and the citizens of London, inflamed by bigots, assaulted him with violence for his moderation to Wycliffe.

On his death, his son Henry de Bolinbroke, duke of Hereford, returned just as it was pronounced by a packed parliament that his banishment should be perpetual. At first, he only claimed his legal inheritance; but finding a weak government, and a strong torrent of popularity, his ambition burst forth, and filled every fail. He dethroned Richard II. by arms, but without a battle, and wore his crown by the name of Henry IV. but by act of parliament, he severed the duchy from the crown. This act, or charter, is intitled, "*Charta Regis Henrici Quarti de Separatione Ducatus Lancastrie a Corona.*" It recites all the titles and prerogatives of the duchy, and decrees that it shall be governed by its own officers, which were at that time a chancellor, an attorney-general, a receiver or treasurer, a clerk of the court, six assessors, twenty-three receivers, and three supervisors. But this is not the first institution of the duchy-court, as has been erroneously imagined. The same was granted to Henry, the first duke of Lancaster, and repeated in the charter or rescript of Edward III. by which that title was conferred on John of Gaunt, and also in the charter of the thirteenth of Richard II. for extending the title and estates to his heirs male. The court has indeed been preserved from this reign with little variation to the present time. Henry IV. was so jealous of his dukedom, and so zealous to preserve it, that he settled it on his son to save the title from being absorbed in that of king.

Henry V. with the assent of parliament, enlarged the dukedom by his mother's estates. She was daughter and heiress of Humphry

phry de Bohun, earl of Hereford, whose estates were of great extent and value, and were situate chiefly in the counties of Essex, Middlesex, Hertford, Cambridge, Norfolk, Lincoln, Bucks, Wilts, Berks, Suffolk, Surry, Gloucester, Dorset, and Hereford, and in the city of London, and the marches of Wales. In this reign, an act of parliament passed, declaring that all grants of offices and estates in the duchy should pass under the duchy seal, or be void.

His successor, Henry VI. did nothing of himself, and was made to do nothing worthy notice relating to the duchy.

After the dethronement and murder of this prince and his son, the right to the dukedom descended to John Beaufort, earl of Somerset, son of Catherine Swinford, third wife of John of Gaunt, duke of Lancaster, whose children by her, before her marriage, were legitimated in the twentieth of Richard II. by act of parliament. But Edward IV. deemed the title and estate forfeited by the attainder of Henry VI.; and by act of parliament united the estates, ("appropriated" is the expression in the act,) to the crown, yet decreed at the same time that the office should remain on its former establishment. Until this period the office of chancellor of the county palatine was distinct from that of the chancellor of the duchy, though often held by the same person; nevertheless the chancellor of the county palatine was always subservient to the chancellor of the duchy, by whom all grants of offices and lands, as well in the county palatine, as in the duchy at large, were made; and if the county palatine seal was necessary to complete the grant, the chancellor of the county affixed it by virtue of a warrant from the chancellor of the duchy. By this act, the county palatine was annexed to the duchy, and the chancellor of the duchy has ever since held the office of chancellor of the county palatine, executing the latter by his deputy or vice-chancellor.

In the twelfth year of this king an act of parliament passed for vesting a very considerable portion of the duchy estates in trustees for the use of the king's will, and the king directed the same by his will to be appropriated to divers charitable and superstitious uses. But this trust was destroyed by an act of the first of Henry VII. and the estates were resumed and re-united to the duchy.

Edward V. was not of an age to make any alterations during the short time he was called king.

Richard III. though he made some excellent laws, with regard to the nation, left the duchy as he found it; but,

Henry VII. whose right to it came from his mother Margaret,

garet, the countess of Richmond and Derby, daughter to John Beaufort, duke of Somerset, who was son to the earl of Somerset just mentioned, broke Edward IV.'s act and entail, separated the duchy again from the crown, and entailed both the crown and duchy on himself and his heirs for ever; and so it has continued distinct, though in the crown, (the time of the usurpation excepted,) to this day; yet it is not observed that any of our kings or princes have borne the title of duke of Lancaster since Henry V. who, by his father's express disposition, inserted it among his other titles when prince of Wales.

Henry VII. in 1509, began to found the hospital, called "Savoy," upon the site of the old palace there, being parcel of the duchy estate; but dying before it was finished, Henry VIII. assigned the building, with all the lands adjoining, to the executors of his father's will, by whom the hospital was completed.

It consisted of a master and four chaplains, who were to provide for one hundred poor out of its revenues, and to pray for the souls of Henry VII. and his mother.

The site of this hospital was part of the manor of the Savoy, which extends through the parishes of Saint Clement Danes and Saint Mary in the Strand. It reverted to Edward VI. by the voluntary surrender of the master and chaplains.

Philip and Mary, regarding the duchy of Lancaster as one of the stateliest pieces of her majesty's inheritance, re-founded the hospital, and re-instated the duchy in its rights and privileges; and annexed several estates to it, in lieu of what had been alienated.

Elizabeth, and afterwards William III. on complaints, visited this hospital by commission; and both, at the different periods, found such neglect and abuses of the charity, as required punishment and reformation. The master and chaplains still seemed incorrigible. Sir Nathan Wright, who, as keeper of the great seal, was visitor of all charities established by royal foundation, (though his right to visit this hospital has been questioned as being of duchy foundation,) perceiving that the original intent of the charity was totally perverted, declared it to be dissolved in 1702, and the lord high treasurer Godolphin thereupon appointed a receiver, to bring the profits of all its endowments into the exchequer. From hence arose a suit between the exchequer and the duchy for the jurisdiction, the rights, and revenues of so much of the possessions of the hospital as originally belonged to the duchy.

This contest commenced in 1718, and long remained undetermined.

terminated. In the year 1743 and 1750, issues were joined for trials; but they were stopped both times on the consideration that it appeared unbecoming adversely to dispute a point at the king's sole expence, where the right was incontestably vested in his majesty only, to ascertain whether that right emerged from the crown or the duchy.

The argument of decency continued in force, during the present, though not so strongly as in former reigns; because the question, in fact, was become, whether the rents and revenues belonged to the public, under the civil list act of the first of George III. which appropriates the land revenues of the crown to the use of the public; or to the king in right of his duchy?

The exchequer derived its claim from the statutes of dissolution of the 32 and 37 of Henry VIII. whereby the possessions of dissolved religious houses were put under the survey of the court of augmentations, and which court, with all its jurisdictions, were since annexed to the court of exchequer.

The duchy officers insisted that the hospital did not fall within the predicament of any of the statutes of dissolution; but on its being surrendered to Edward VI. came under the disposition of the common law, and reverted to the donor or his heirs in the same right wherein he had granted it. That therefore Edward VI. took it in right of the duchy, which is evinced by the circumstance of Philip and Mary re-granting it under the duchy seal; that their charter of re-foundation, passing both the great seal and duchy seal, was necessary to the erecting of the corporate body; and that the hospital in like manner reverted to Anne in right of her duchy upon the dissolution. This dispute was terminated in 1772 by an act of parliament, which declared that the king, his heirs and successors, should possess, in right of the crown, the two places of worship called the High German church, and the Low German church, in the Savoy precinct, with their church-yards and appurtenances, and also the barracks, with the prisons and fustling houses belonging to them, with the two houses near a place in the Savoy called the Friary, generally occupied by officers commanding the soldiers there; and these, with their rents and profits, were placed under the order, survey, and governance of the exchequer. The residue of the Savoy precinct was declared to be parcel of the duchy of Lancaster, and under the survey, receipt, and governance of the chancellor, council, and officers of that duchy. And all grants, leases, and letters patent of these premises, are to be made by the king, his heirs and successors, under the seal of the duchy, and no other.

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To return from the digression respecting the Savoy hospital. The wide-spreading inheritance of the duchy of Lancaster was greatly increased by the several acts of Henry VIII. for the dissolution of monasteries, and for erecting the court of augmentation; and by the act of Edward VI. for the dissolution of colleges and chantries; and by a charter of Philip and Mary, made in pursuance of an act of parliament, whereby very large estates in the counties of Hertford, Essex, Bucks, Suffolk, Suffex, and York, were united to the duchy; and so great a regard was paid by this queen to the future preservation of this her patrimonial inheritance, that she got a clause inserted in this act, declaring that all such estates as had been since the first of Edward VI. or should be at any time afterward, granted from the duchy, and had or should revert, or be forfeited to, the crown, should return to the survey of the duchy court.

This favourite succession, thus formed and augmented, came to James I. (notwithstanding many grants in fee were given by those sovereigns) in such good condition as to raise in the beginning of his reign a very large annual income, and to make a considerable part of the civil establishment, over and above some extensive and valuable domains, which he granted, together with divers crown lands, to trustees, to maintain his sons Henry prince of Wales and prince Charles.

The king's necessities afterward requiring extraordinary sums to be raised from his landed property, he first began with taking large fines for leases of duchy estates, upon contract for sixty years; but finding money came in slowly from this scheme, he proceeded to make grants in fee, to all who would become purchasers on his terms; so that when Charles I. succeeded to the throne, he found the duchy possessions reduced to little more than the estates comprized in his own settlement, and in the leases for sixty years.

Charles's exigencies drove him to follow the example of his father in selling his duchy inheritance, by which he raised money to a considerable amount. No part of it was preserved, except some few forests and parks, and the estates which went to his queen Henrietta in jointure, and those which were comprized in the leases for sixty years, granted by his father, and even many of those were sold in reversion for small sums; but upon almost all the grants in fee, there were reserved to the crown fee-farm rents, which were in the whole of a large amount.

In 1649, a commission was appointed, by an act of the commons, for the sale of the crown and duchy lands. The restoration cancelled all transactions in consequence of that act.

Charles II. soon after his accession, made several very extensive

five grants in fee of duchy estates to persons instrumental in his restoration, particularly to the duke of Albemarle, and the earl of Sandwich; and he also made many leases for terms of ninety-nine years in reversion, at very small rents, some of which are still subsisting. In 1665, he settled divers fee-farm rents, and very near all the landed estate of the duchy (which was not in jointure upon his mother Henrietta,) upon queen Catherine for her life; and Henrietta dying in 1671, the king added the estates comprized in her settlement to Catherine's jointure, so that the remaining revenue from the duchy to the crown sunk to a state of insignificance.

In 1670 and 1672, this king had two acts to sell all the fee-farm rents, as well those of the crown as of the duchy, and they were accordingly sold; and such as were in settlement on queen Catherine where either surrendered by her, and an equivalent granted to her by change on the hereditary excise, or were sold in reversion expectant on her death.

James II. though a prince of more order and business, did not attempt to save this ducal part of his patrimony from ruin; and such was the reduction of its income, that, in 1686, the officers of the duchy agreed to reduce their own salaries, to make them better tally with the small production from the duchy estate.

William III. accelerated the decline. He granted for ninety-nine years, after the demise of queen Catherine in 1705, most of the estates comprized in her jointure, which were all that remained unsold, except what is not worth mentioning.

Such is the history of this royal patrimony to the present period; but it is still believed, that if proper advantage is made of the leases when they expire, the public may derive from it a considerable revenue.

OFFICERS. The officers in the duchy court, are a chancellor, an attorney general, king's serjeant, king's counsel, receiver general, two auditors, a clerk of the council and register, a secretary and clerks.

OFFICE. The office of this court is in Somerset Place.

COURTS PALATINATE. The palatinate courts are superior courts of record, which exercise a jurisdiction within their own precincts in as ample a manner as the higher courts do at Westminster. Into them the king's ordinary writs do not run; and although they have *jura regalia*, yet they derive their authority from the crown; but at this day no palatinate jurisdiction can be erected, without an act of parliament. When the privileges of these counties palatine and franchises were abridged by statute 27 Hen. VIII. c. 24. it was also enacted, that all writs and process should be made in the king's name,
but

but should be *test'd* or witnessed in the name of the owner of the franchise. Wherefore all writs, whereon actions are founded, and which have current authority in counties palatine, must be under the seal of the respective franchises. And the judges of assize, who sit therein, sit by virtue of a special commission from the owners of the franchises, and under their seal; and not by the usual commission, under the great seal of England. The palatinate courts are at this day three, *viz.* Chester, Durham, and Lancaster.

CHESTER. This is a county palatine by prescription, and, according to lord Coke, the most ancient and honourable remaining at this day. Within this county palatine, and the county of the city of Chester, there is, and anciently has been, a principal officer called the chamberlain of Chester, who has, and time out of mind has had, the jurisdiction of a chancellor; and the court of exchequer at Chester is, and time out of mind has been, the chancery court for the county palatine, whereof the chamberlain is judge in equity: he is also judge of matters at the common law within the county, for, like the court of chancery at Westminster, this is a mixed court. There is also within this county palatine, a justice for matters of the common pleas, and pleas of the crown, to be heard and determined there, commonly called the chief justice of Chester. All pleas of lands or tenements, and all other contracts, causes, and matters arising and growing within this county palatine, are pleadable, and ought to be pleaded, heard, and judicially determined, within the county, and not elsewhere; and if any be pleaded, heard, or judged out of the county, the act is void, and *coram non iudice*, except it be in case of treason, error, foreign plea, or foreign voucher.

OFFICERS. The justices of Chester include in their duty, and comprise under their authority, three counties in Wales. There is besides an attorney general of Chester.

DURHAM. This is also a county palatine by prescription, and said to have been erected soon after the conquest, and is parcel of the bishoprick of Durham. The jurisdiction of the bishop of Durham extends to all places between the rivers Tyne and Tees. In this county palatine there is a court of chancery, which is a mixed court both of law and equity, as the chancery at Westminster. If an erroneous judgment be given, either in the chancery upon a judgment there, according to the common law, or before the justices of the bishop, a writ of error must be brought before the bishop himself; and if he gives an erroneous judgment, a writ of error may be sued out returnable in the court of king's bench.

LANCASTER. This county palatine is merged in the crown,
but

but still the general rules respecting such counties are observed in it, and writs are directed to the chancellor, and not, as in other places, to the sheriff.

ELY. Ely is not a county palatine, but a royal franchise, granted by Henry I. to the bishop of Ely, and his successors, of hearing and determining as well civil as criminal pleas. The franchise is however of much earlier date than the time of Henry I. The bishoprick was founded by that prince in the tenth year of his reign, in 1109, and immediately afterward the grant here alluded to was made; but the franchise itself may be traced back to the seventh century; and Henry's charter, referring to preceding grants, declares that the church of Ely shall *continue* to have the same privileges and liberties as it had *die qua Edwardus vivus et mortuus fuit*. The jurisdiction of the bishop is now exercised by his justices by prescription, grounded on the said grant, and the judge of the Isle of Ely holds a circuit separate from the other judges.

COURTS OF THE CINQUE PORTS. There are several courts within the Cinque Ports; one before the constable of the castle at Dover; others within the ports of themselves, before the mayors and jurats; another, which is called *the court of the Cinque Ports*, at Shepway. There is a court of chancery in the Cinque Ports; from which no original writs issue, but it serves only to decide matters of equity. It is said the great use of their chancery is to relieve against errors in proceedings at law, which they used to endorse upon the bill. The lord-warden has two jurisdictions, the authority of an admiral, to hold plea by bill concerning the guard of the castle, &c. according to the course of the common law; and that exempt from the admiralty of England; which jurisdiction is saved to him in several acts of parliament. The mayors and jurats of the several Cinque Ports have power to hold plea, &c. and upon their judgment, no writ of error lies in the king's bench; but they are examinable by bill in nature of a writ of error, before the lord warden of the Cinque Ports, in his court at Shepway. The jurisdiction of the Cinque Ports is general, as well as to personal, as real and mixed actions.

A writ of error, it is to be observed, lies from all the other jurisdictions to the same supreme court of judicature, as an ensign of superiority reserved to the crown, at the original creation of the franchises; and all prerogative writs, as those of *habeas corpus*, *prohibition*, *certiorari*, and *mandamus*, may issue for the same reason to all these exempt jurisdictions; because the privilege, that the king's writ runs not, must be intended between party and party, for there can be no such privilege against the king.

COURTS OF THE STANNARIES. The stannary courts in Devonshire and Cornwall, for the administration of justice among the tinners, are also courts of record, but of the same private and exclusive nature. They are held before the lord warden and his substitutes, in virtue of a privilege granted to the workers in the tin-mines, to sue and be sued only in their own courts, that they may not be drawn from their business, which is highly profitable to the public, by attending their law-suits in other courts. The privileges of the tinners are confirmed by a charter, 33 Edw. I. and fully expounded by a private statute, 50 Edw. III. which has since been explained by a public act, 16 Chas. I. c. 15. All tinners and labourers, in and about the stannaries, are, during the time of their working therein *bona fide*, privileged from suits of other courts, and can only be impleaded in the stannary court in all matters, excepting pleas of land, life, and member. No writ of error lies from hence to any court in Westminster-hall, as was agreed by all the judges in 4 James I.; but an appeal lies from the steward of the court to the under-warden, and from him to the lord-warden; and thence to the privy council of the prince of Wales as duke of Cornwall, when he has had livery or investiture of the same. And from thence the appeal lies to the king himself, in the last resort.

COURTS OF THE UNIVERSITIES. The universities of Oxford and Cambridge enjoy the sole jurisdiction; in exclusion of the king's courts, over all civil actions and suits whatsoever, when a scholar or privileged person is one of the parties; excepting in such cases where the right of freehold is concerned. And these, by the university charter, they are at liberty to try and determine, either according to the common law of the land, or according to their own local customs, at their discretion; which has generally led them to carry on their process in a course much conformed to the civil law. These privileges were granted, that the students might not be distracted from their studies by legal process from distant courts, and other forensic avocations; and privileges of this kind are of very high antiquity, being generally enjoyed by all foreign universities as well as our own, in consequence of a constitution of the emperor Frederick, in 1158. As to England in particular, the oldest charter, containing this grant to the university of Oxford, was made in the 28 Hen. III. 1244; and the same privileges were confirmed and enlarged by almost every succeeding prince, down to Henry VIII.; in the fourteenth year of whose reign, the largest and most extensive charter of all was granted. A similar franchise was afterwards granted to Cambridge, in the third year of queen Elizabeth. The privileges granted by these charters of proceeding

in a course different from the law of the land, were of so high a nature, that they were held to be invalid; for although the king might erect new courts, yet he could not alter the course of law by his letters patent; and therefore, in the reign of Elizabeth, an act of parliament was obtained, confirming *all* the charters of the two universities, and those of the 14th of Henry VIII. and 3d Elizabeth by name. This *blessed act*, as Sir Edward Coke intitles it, established this high immunity without any doubt or opposition. This privilege, so far as it relates to civil causes, is exercised in the chancellor's court; the judge of which is the vice-chancellor, his deputy or assessor. From his sentence an appeal lies to delegates appointed by the congregation; from them to other delegates of the house of convocation; and if they all three concur in the same sentence, it is final at least by the statutes of the universities, according to the rule of the civil law. But if there be any discordance or variation in any of the three sentences, an appeal lies in the last resort to judges delegates, appointed by the crown under the great seal in chancery.

COURTS IN THE CITY OF LONDON. There are several courts within the city of London, which exercise authority according to their own stated rules and forms, but yet are subject to the controul and correction of the king's courts at Westminster, whenever they exceed their jurisdiction. The chief of them are the following:

COURT OF ALDERMEN. The court of lord-mayor and aldermen is a court of record, wherein is lodged a great part of the executive power of the city; by it all leases and other instruments that pass the city seal are executed, the assize of bread ascertained, contests relating to water-courses, lights, and party walls, adjusted, and the city officers suspended and punished according to their several offences. This court has not only a power of electing annually eleven overseers, or rulers of the fraternity of watermen; but likewise a right of fixing their several taxes, with the approbation of the privy council; and also a right of disposing of most of the places belonging to the city officers.

COURT OF COMMON COUNCIL. This court consists of the lord-mayor, aldermen, and representatives of the several wards; who being the city legislature, make bye laws for its good government. They assemble in Guildhall, as often as the lord mayor by his summons thinks proper to convene them: they annually select from among themselves, a committee of six aldermen, and twelve commoners, for letting the city lands, to which end they usually meet at Guildhall on Wednesdays. They likewise appoint another committee of four aldermen and eight com-

moners, for transacting the affairs belonging to the benefactions of Sir Thomas Gresham, who generally meet at Mercers' hall at the appointment of the lord-mayor, who is always one of the number. They also, by virtue of a royal grant, yearly appoint a governor, deputy, and assistants, for managing the city lands in Ireland. They have also a right of disposing of the offices of town clerk, common serjeant, judges of the sheriff's court, common crier, coroner, bailiff of the borough of Southwark, and city garbler.

THE COURT OF HUSTINGS This is the highest and most ancient court of record within the city of London, and is always held at Guildhall, before the lord-mayor and sheriffs of London for the time being; but when any matter is to be argued and determined in this court, the recorder sits as judge with the lord-mayor and sheriffs, and gives rules and judgment therein. This court has jurisdiction of all pleas, real, personal, and mixed; and for this purpose it is distinguished into two courts, as the judges sit one week on real actions, and the other on those which are personal and mixed. In this court, deeds may be enrolled, recoveries passed, wills proved, and replevins, writs of error, writs of right patent, writs of waste, writs of partition, and writs of dower, determined for any matters within the city of London, and its liberties. Real actions are now, it is to be observed, grown out of use. Judgment of outlawry in the hustings is not given by the mayor, who is coroner, or his deputy, but by the recorder, by the custom of the city. In this court, the lord-mayor for the ensuing year, the sheriffs, chamberlain, and bridge-master are chosen.

THE MAYOR'S COURT. The mayor's court is a court of record, held before the mayor and aldermen for all actions arising within the liberties of London; in which the recorder is judge, but the mayor and aldermen may join with him when they please. So, in this court, all matters of equity within London, may be determined upon bill and answer, upon which the recorder is also judge. This equitable jurisdiction is founded on the custom of London, by virtue of which, if a man be impleaded before the sheriffs, upon a suggestion, the mayor may bring the parties and record before him, and examine them upon their pleas; and if he finds that the plaintiff is satisfied, order that the plaintiff be barred. But by the custom, the mayor cannot examine the parties after judgment. This court is held every day, except Sundays and Holidays, sessions at the Old Bailey, and in Southwark, and sittings of the common council and courts of conservancy. It takes cognizance of actions of debt and trespass, appeals from inferior courts, and foreign attachments, apprenticeship, personal actions, and others arising

arising within the city and liberties. An action may be removed, by *habeas corpus*, or *certiorari*, into a superior court, if the debt be above five pounds, but if under ten pounds it cannot be allowed, until bail be put in before the register of this court. Affidavits of execution of deeds and other instruments are also exemplified under the mayoralty seal, by the attorneys of this court. The juries are returned by their several wards, at their wardmote inquests.

OFFICERS. The judges of this court have already been mentioned; they are assisted by the common serjeant, and the court is attended by a register and his assistant. The business is conducted by four appointed counsel, and there are belonging to the court, four attorneys, who have an office over the Royal Exchange.

THE SHERIFF'S COURTS. The sheriffs have two courts which are of record for trial of debt, case, trespass, account, covenant, attachment, and sequestration, held on Thursdays and Saturdays for the Poultry; and on Wednesdays and Fridays for Giltspur Street. An action may be moved by *habeas corpus*, into a superior court at Westminster, if the debt be above five pounds, but if under ten, it then cannot be allowed, until bail be put in before a judge of this court. Actions may also be removed as already mentioned into the lord-mayor's court, or the court of hustings, by a process called a *levatur*.

OFFICERS. In these courts the sheriffs sit as judges, aided by their respective under-sheriffs, and by two judges, who are barristers at law. The causes are conducted by the same counsel who practise in the lord-mayor's court; and there are eight attorneys, two secondaries, two clerks of the papers, who return all writs, and copy declarations; eight clerks sitters who enter actions, and take bail in their weeks successively; thirty-six serjeants at mace for both compters, and thirty-six yeomen.

THE CHAMBERLAIN'S COURT. This is an office kept in the Guildhall of London, by the chamberlain of the city, who is annually chosen by the liverymen of the respective companies on Midsummer day. This practice may however be considered a mere custom, for there is no instance of a chamberlain being turned out, unless found guilty of mal-practices. This place of chamberlain being one of great trust, he is obliged when chosen to give security for his fidelity. He receives and pays all the city's cash, and with him are deposited all public securities, for which he annually accounts to the proper auditors. This officer attends every morning for enrolling and turning over apprentices, admits all persons duly qualified to the freedom of the city, and decides all differences that arise between masters and apprentices.

COURT OF THE CORONER. The lord-mayor being perpetual coroner of the city, this court is held before him, or his deputy, who is to enquire into the cause of the death of any person, who, upon sight of the body, is supposed to have come to an untimely end, as he is likewise into the escape of the murderer; and also concerning found treasure, deodands, and wrecks at sea.

COURT OF THE ESCHEATOR. The lord-mayor of London being perpetual escheator within the city, this court is also held before him or his deputy, to whom all original writs of *Diem clausit extremum, mandamus, devenerunt, melius inquirend.* &c. are directed to find an office for the king, after the death of his tenant, who held by knights service. The escheator may also find an office for treason and felony.

COURT OF REQUESTS. The first of these courts was established in London, so early as the reign of Henry VIII. by an act of their common council; which however was certainly insufficient for that purpose, and illegal, till confirmed by statute 3 James I. c. 15. which has since been explained and amended by 14 Geo. II. c. 10. The constitution is this: two aldermen, and four commoners sit twice a week to hear all causes of debt not exceeding the value of forty shillings; which they examine in a summary way, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good conscience. The time and expence of obtaining this summary redress being very inconsiderable, several trading towns and other districts have obtained acts of parliament, for establishing in them courts of conscience, upon nearly the same plan as that in the city of London.

THE COURT OF ORPHANS. This court is occasionally held by the lord-mayor and aldermen, who are guardians to children under the age of twenty-one years, at the decease of their fathers; and who take upon them, not only the management of their goods and chattels, but likewise that of their persons, by committing them to careful tutors, to prevent their disposing of themselves during minority, without their approbation. The common serjeant is authorized by the court, to take exact accounts and inventories of all deceased freemen's estates; and the youngest attorney of the mayor's court, being clerk to that of the orphans, is appointed to take securities for their several portions, in the name of the chamberlain of London, who is a sole corporation of himself, for the service of the orphans; and to whom a recognizance or bond, made on account of an orphan, by the custom of London, descends to his successor; which is hardly known elsewhere. When a freeman of London dies, and leaves children in their minority, the clerks of their several parishes give in their names to the common crier, who

is thereupon immediately to summon the widow, or executor, to appear before the court of lord mayor and aldermen, to bring in an inventory of, and give security for, the testator's estate; for which, two months time is commonly allowed: and in case of non-appearance, or refusal of security, the lord-mayor may commit the contumacious executor to Newgate.

THE WARDMOTE. The court of wardmote is held for every ward in the city: for each ward is of the nature of an hundred in a county. By inquisition of twelve men, the wardmote inquires of defaults in paving the streets, and similar matters. The wardmote is convened by precept annually, on Saint Thomas's day, on which occasion the aldermen and the householders of the ward proceed to elect their proper officers, and the precept, which is very long and minute, serves as instructions to the inquest in the performance of their duty.

FOLKMOTE. The folkmote or hall-mote belongs to the several companies of citizens, by whom it is occasionally held in their respective halls, and wherein the affairs belonging to each corporation are respectively transacted.

COURT OF CONSERVANCY. This court is yearly held eight times before the lord mayor, at such places and times as he appoints within the respective counties of Middlesex, Essex, Kent, and Surry; in which several counties he has a power of summoning juries, who, for the better preservation of the fishery of the river Thames, and regulation of the fishermen who fish therein, are, upon oath, to make inquisition of all offences committed in and upon the river from Staines bridge in the West, to Yensfleet in the East; and to present all persons found guilty of a breach of the articles prescribed for regulation in such matters. And for the more effectual preservation of the navigation, and fish in the river Thames, the lord-mayor, as conservator, has his assistant or deputy the *water-bailiff*; who, together with his substitutes, detect and bring to justice persons destroying either the current or fish.

THE TOWER COURT. This is a court of record, held by prescription, within the verge of the city, on Great Tower Hill, by a steward appointed by the comptroller of the Tower of London, by whom are tried actions of debt (for any sum,) damage and trespass.

COURT OF SAINT MARTIN'S LE GRAND. This court, though within the city, is yet without its jurisdiction, as being in and belonging to the liberty of that name, which is subject to the dean and chapter of Westminster: it is a court of record, held weekly on Wednesdays, for the trial of all personal actions whatsoever; the principal process whereof is a *capias* against the body, or an attachment against the goods; so that a man's

effects may be seized in his own house, upon the first process, if his person is not secured before ; which is according to the practice of all ancient liberties or franchises.

COMMON LAW COURTS. The numerous courts formed for the distribution of justice in the capital are so distinctly mentioned, as they may serve by analogy to illustrate the manner in which justice is, or may be administered in all other cities, boroughs, or corporate jurisdictions within the realm ; for all, by grant or prescription, may have courts for matters within their precincts. In every case, where power is given to any to hear and determine, they have judicial authority, and act as judges ; and authority to fine and imprison constitutes a court of record. It is to be observed that these establishments, whether of public and general, or only of private and special jurisdiction, are not to be deemed innovations, but are, on the contrary, strictly congenial with the spirit of the constitution. The policy of that constitution, as regulated and established by the great Alfred, was to bring justice home to every man's door, by forming as many courts of judicature as there are manors and townships in the kingdom ; wherein injuries were redressed in an easy and expeditious manner, by the suffrage of neighbours and friends. These little courts, however, communicated with others of a larger jurisdiction, and those with others of a still greater power ; ascending gradually from the lowest, to the supreme courts, which were respectively constituted to correct the errors of the inferior ones, and to determine such causes as, by reason of their weight and difficulty, demanded a more solemn discussion. The course of justice flowing in large streams from the king, as the fountain, to his superior courts of record ; and being then subdivided into smaller channels, till the whole and every part of the kingdom were plentifully watered and refreshed.

The order observed by Sir William Blackstone, whose course is followed on the present occasion, in treating on these several courts, constituted for the redress of *civil* injuries, reserving those of a jurisdiction merely *criminal*, is by beginning with the lowest, and those whose jurisdiction, though public and generally dispersed throughout the kingdom, is yet, with regard to each particular court, confined to very narrow limits ; and so ascending gradually to those of the most extensive and transcendent power.

COURT OF PIEPOUDRE. The lowest, and at the same time the most expeditious court of justice known to the law of England, is the court of *piepoudre*, *curia pedis pulverizati*, so called from the dusty feet of the suitors ; or, according to Sir Edward Coke, because justice is there done as speedily as dust can fall from

the foot. But the etymology given by Barrington, in his observations on the penal statutes, is much more ingenious and satisfactory; it being derived, according to him, from *pied poudreux* (a pedlar in old French,) and therefore signifying the court of such petty chapmen as resort to fairs or markets. It is a court of record, incident to every fair and market; of which the steward of him who owns or has the toll of the market is the judge; and its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one. So that the injury must be done, complained of, heard, and determined within the compass of one and the same day, unless the fair continues longer. The court has cognizance of all matters of contract that can possibly arise within the precinct of that fair or market; and the plaintiff must make oath that the cause of action arose there. From this court a writ of error lies, in the nature of an appeal, to the courts at Westminster; which are also bound by the statute 19 Geo. III. c. 70. to issue writs of execution, in aid of its process, after judgment, where the person or effects of the defendant are not within the limits of this inferior jurisdiction.

COURT BARON. The court baron is a court incident to every manor in the kingdom, to be holden by the steward within the manor. The court baron is of two natures: the one is a customary court, appertaining entirely to the copyholders, in which their estates are transferred by surrender and admittance, and other matters transacted, relative to their terms only. The other is a court of common law, and it is the court of the barons, by which name the freeholders were sometimes anciently called, or rather, perhaps, it was so called as the court of the baron or lord of the manor, to which his freeholders owed suit and service. These courts, though in their nature distinct, are frequently confounded together. The court now under consideration, *viz.* the freeholders' court, was composed of the lord's tenants, who were the *parcs* of each other, and were bound by their feudal tenure to assist their lord in the dispensation of domestic justice. This was formerly held every three weeks; and its most important business is to determine, by writ of right, all controversies relating to the right of lands within the manor. It may also hold plea of any personal actions, of debt, trespass on the case, or the like, where the debt or damages do not amount to forty shillings. But the proceedings on a writ of right may be removed into the county court, by a precept from the sheriff; and the proceedings in all other actions may be removed into the superior courts by the king's writs. After judgment given, a writ also of false judgment lies to the courts

at Westminster to rehear and review the cause, and not a writ of error, for this is not a court of record.

HUNDRED COURT. A hundred court is only a larger court baron, being held for all the inhabitants for a particular hundred instead of a manor. The free suitors are here also the judges, and the steward the registrar, as in a court baron. It is likewise no court of record; resembling the former in all respects, except that in point of territory it is of a greater jurisdiction. This hundred court was denominated *hareda* in the Gothic constitution; but as causes are equally liable to removal from hence, as from the common court baron, and by the same writs, and may also be removed by writ of false judgment, the court is fallen into equal disuse with regard to the trial of actions.

COUNTY COURT. The county court is a court incident to the jurisdiction of the sheriff. It is not a court of record, but may hold pleas of debts or damages under the value of forty shillings; over some of which causes these inferior courts have, by the express words of the statute of Gloucester, a jurisdiction totally exclusive of the king's superior courts. The county court may also hold plea of many real actions, and of all personal actions to any amount, by virtue of a special writ, called a *justicies*, which is a writ empowering the sheriff, for the sake of dispatch, to do the same justice in his county court, as might otherwise be had at Westminster. The freeholders of the county are the real judges in their court, and the sheriff is the ministerial officer. The great conflux of freeholders, supposed always to attend at the county court, is the reason why all acts of parliament, at the end of every session, were wont to be there published by the sheriff; why all outlawries of absconding offenders are there proclaimed; and why all popular elections, which the freeholders are to make; as formerly of sheriffs and conservators of the peace, and still of coroners, verderors, and knights of the shire, must ever be made *in pleno comitatu*, or, in full county court. By the statute 2 Ed. IV. c. 25. no county court can be adjourned longer than for one month, consisting of twenty-eight days. And this was also the ancient usage, as appears from the laws of Edward the elder. In those times the county court was one of great dignity and splendour; the bishop and the ealdorman (or earl), with the principal men of the shire, sitting to administer justice both in lay and ecclesiastical causes. Its dignity was much impaired, when the bishop was prohibited, and the earl neglected to attend; and, in modern times, as proceedings are removeable into the king's superior courts, by writ of *pone* or *recordari*, in the same manner as from

from hundred courts, and courts baron; and as the same writ of false judgment may be had, in nature of a writ of error, actions in the county court are fallen into disuse.

These are the several species of common law courts, which, though dispersed universally throughout the realm, are nevertheless of a partial jurisdiction, and confined to particular districts: yet communicating with, and, as it were, members of, the superior courts of a more extended and general nature; which are calculated for the administration of redress, not in any one lordship, hundred, or county only, but throughout the whole kingdom at large.

COURT OF COMMON PLEAS. By the Saxon constitution, there was only one superior court of justice in the kingdom, and that had cognizance both of civil and spiritual causes, viz. the wittena-gemot, or general council, which assembled annually, or oftener, wherever the king kept his Easter, Christmas, or Whitsuntide, as well to do private justice as to consult on publick business. But after the conquest, the ecclesiastical jurisdiction was diverted into another channel; and the conqueror, fearing danger from these annual parliaments, contrived also to separate their ministerial power, as judges, from their deliberative, as counsellors to the crown. He therefore established a constant court in his own hall, made up of the officers of his palace, who transacted the business, both criminal and civil, as well as matters of the revenue. When they sat in the hall, they were called a court criminal, when up stairs a court of revenue; the civil pleas they held in either court. This court was called, by Bracton and other authors, *aula regia*, or *aula regis*. These high officers were assisted by certain persons learned in the laws, who were called the king's *justiciars* or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of court of appeal, or rather of advice, in matters of great moment and difficulty. These, in their several departments, transacted all secular business, both criminal and civil, and likewise matters of the revenue: and over all presided one special magistrate, called the chief *justiciar*, or *capitalis justiciarius totius Angliæ*; who was also principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. And this officer it was, who principally determined all the vast variety of causes that arose in this extensive jurisdiction; and, from the plenitude of his power, grew, at length, both obnoxious to the people and dangerous to the government which employed him. This great universal court being bound to follow the king's household in all its progresses and expeditions, the
trial

trial of common causes was found very burthensome to the subject. Wherefore John, who dreaded also the power of the *justiciar*, very readily consented to that article, which now forms the eleventh chapter of magna charta, and enacts "that common pleas shall not follow our court, but shall be holden in some place certain." This certain place was established in Westminster-hall, the place where the *aula regia* originally sat, when the king resided in that city; and there it has ever since continued. The court being thus rendered fixed and stationary, the judges became so too, and a chief, and other justices of the common pleas, were thereupon appointed, with jurisdiction, to hear and determine all pleas of land, and injuries merely civil, between subject and subject; which critical establishment of this principal court of common law, at that particular juncture, and that particular place, gave rise to the inns of court in its neighbourhood; and thereby collecting together the whole body of the common lawyers, enabled the law itself to withstand the attacks of the canonists and civilians, who laboured to extirpate and destroy it. The *aula regia* being thus stripped of so considerable a branch of its jurisdiction, and the power of the chief *justiciar* being also curbed by many articles in the great charter, the authority of both began to decline apace under the long and troublesome reign of Henry III.; and, in further pursuance of this example, the other several officers of the chief *justiciar* were, under Edward I. who new-modelled the whole frame of our judicial polity, subverted and broken into distinct courts of judicature. The distribution of common justice, between man and man, was thrown into so provident an order, that the great judicial officers were made to form a cheque upon each other; the court of chancery issuing all original writs under the great seal to the other courts; the common pleas being allowed to determine all causes between private subjects, the exchequer managing the king's revenue; and the court of king's bench retaining all the jurisdiction which was not cantoned out to other courts, and particularly the superintendence of all the rest by way of appeal; and the sole cognizance of the pleas of the crown, or criminal causes: for pleas or suits are regularly divided into two sorts; *pleas of the crown*, which comprehend all crimes and misdemeanors, wherein the king, on behalf of the public, is plaintiff; and *common pleas*, which include all civil actions depending between subject and subject. The former of these were the proper object of the jurisdiction of the court of king's bench; the latter of the court of common pleas, which is a court of record, and is styled, by Sir Edward Coke, "the lock-and-key of the common law," for herein only can

can real actions, that is, actions which concern the right of freehold or the realty, be originally brought: and all other, or personal pleas between man and man, are here determined; though, in the latter, the king's bench and exchequer have also a concurrent authority.

JURISDICTION. This court without any writ may, upon suggestion, grant prohibitions, to keep, as well temporal as ecclesiastical courts within their bounds and jurisdiction, without any original or plea depending; for the common law, which in these cases is a prohibition of itself, stands instead of an original. Actions are also removed into this court out of inferior courts, whether of record or not, by proper writs. In term time, it may award a *habeas corpus* by the common law for any person committed for any cause under treason or felony, and thereupon discharge him, if it shall clearly appear by the return, that the commitment was against law, as being made by one who had no jurisdiction of the cause, or for a matter for which, by law, no man ought to be punished. And now it is clear, that this court has a general jurisdiction to grant writs of *habeas corpus*, in all cases. It also has jurisdiction for the punishment of its own officers and ministers, and all other persons guilty of contempt against the rules and orders of the court. Its jurisdiction is general, and extends throughout England; and as inferior courts, which are not of record, cannot hold plea of debt, &c. or damages, but under forty shillings, so the superior courts, that are of record, cannot hold plea of debt, &c. or damages regularly, unless the same amount to forty shillings, or above.

OFFICERS. The officers of the court of common pleas are very numerous; and the duties of some of them apply solely to the jurisdiction which this court exclusively holds over the alienation of real estates. In the enumeration which follows, it is to be observed that those officers alone are mentioned whose appointment is peculiar to this court; the duties and appointments of judges and some other persons will be mentioned in a subsequent page.

CUSTOS BREVIUM. The *custos brevium* is the first or principal officer of this court, and holds his place by the king's letters patent. His office is to receive and keep all the writs, and put them on files, every return by itself; and, at the end of every term, to receive of the prothonotaries all the records of *nisi prius*, called the *poslea*. The *custos brevium* also makes entry of the writs of covenant, and the concord upon every fine, and makes out exemplifications and copies of all writs and records in his office, and of all fines levied; and his duty extends to some other particulars respecting fines.

PROTHONOTARY

PROTHONOTARIES. There are three prothonotaries of this court, who hold their offices for life, and are admitted by the chief justice of the court for the time being; but the second prothonotary is admitted on the nomination of the *custos brevium*, who, in right of his office, has that appointment. In term time, they attend the sitting of the court at Westminster, for the dispatch of such matters as arise from causes entered in the office; and to inform the court of the state of such causes, and certify to them in matters of practice when required. They also attend at their office in Tanfield-court, in the Inner Temple, to tax costs, receive declarations, and pass officially many other matters in the progress of a suit at law.

SECONDARIES. There are also three secondaries, one belonging to, and nominated by, each prothonotary. In term time they attend the court and judges in the treasury, to read all the records, writings, affidavits, petitions, papers, and exhibits; take minutes of all rules and orders, and draw up the same, and take recognizances in court; have the custody of the court books, in which are entered the names of all causes on demurrer, special verdicts, and other matters that are to be argued in court, and of causes that are to be tried at bar; enter all commitments of prisoners, discontinuances, and satisfactions acknowledged upon record, and amend records by order of the court; they also attend trials at bar, and have some other duties.

CLERK OF THE JUDGMENTS. This officer draws up final judgments, enters satisfaction on judgments, and has several other duties relating to the judgment rolls.

OTHER OFFICERS. From the specimen already afforded, it will be perceived that a description of the duty of every officer would only lead to a technical division of the various circumstances arising in the progress of a suit, without conveying any clear information; it is therefore considered sufficient merely to name several of the other officers in the court, and to describe only those whose duties are of more general extent. There are in the common pleas, a clerk of the dockets, clerk of the reversals, clerk of the treasury, clerk of the jurats, treasury keeper, clerk of the warrants, clerk of the esloigns, clerk of the juries, exigenter, clerk of the outlawries, and clerk of the errors.

FILACERS. The filacer is an officer, so called, because he files those writs whereon he makes out process. There are thirteen filacers, among whom the several counties of England are divided, beside one for the counties palatine of Chester, Lancaster, and Durham. These officers make out all process before appearance in actions, wherein process of
 out-

outlawry lies, until the exigent is awarded; and many relating to the recovery of real estates. They also take special bail in common cases; appearances are to be entered with them; they procure the original to be sued forth and filed on process to outlawry; take affidavits of debts, in order to hold to bail; affidavits of the service of process; file bills brought against persons entitled to privilege of parliament, and make out the subsequent process thereon, before appearance.

FINES AND RECOVERIES. The offices peculiarly set apart to the transaction of this mode of transferring real estates are:

RETURN OFFICE. The return office and office of inrolment of writs for fines and recoveries is in the nomination of the three puisne judges, by virtue of an act of parliament made in the twenty third year of Elizabeth. The clerk of inrolment or his deputy returns all writs of covenant, entry, summons, and seisin, in the names of the sheriffs of the several counties and cities in England; and makes regular entries in books, provided at his own charge for that purpose.

KING'S SILVER. The clerk of the king's silver claims it to be his duty, to inspect and see that all fines, brought to his office, have regularly passed through the several offices conformably to the usage of the court; to enter the whole of all fines, together with the post fine paid thereon, into books which remain in the office as records: he is also to stop all such fines, against the passing of which caveats are entered, and file such *caveats* with all rules of court, judges' orders, and affidavits of the cognisors, being alive, where captions have been brought to this office. All caveats, and orders for stopping any fines, must be renewed every term, and copies left with the clerk of the king's silver, for which he is to demand only his ancient fee of 3s. 4d. the term; and in default thereof all caveats not so renewed, lose their force and effect.

CHIROGRAPHER. The chirographer draws up and makes out, from all parts of the fine, the final concord, and ingrosses a record thereof. The office is held by letters patent from the crown. There is a register and record-keeper belonging to the office, and the chirographer appoints certain clerks for the several counties in England.

Besides these, there are other officers of the court, whose duties are dependent on particular circumstances, and their appointments on certain individuals.

JUDGES' CLERKS. The judges' clerks are verbally appointed by the respective judges, to continue during pleasure. The clerks of the lord chief justice make out commissions for taking affidavits and special bails, and file the approbations signed

ed by one of the puisne judges, in order for such commissions, and enter the name of the commissioners so appointed, in a book kept for that purpose.

ASSOCIATE MARSHAL, AND CRYER AT NISI PRIUS. These offices are all in the gift of the chief justice, and he bestows them by parol appointment, during pleasure.

PROCLAMATOR. The office of chief proclamator is hereditary, and the holder of it had power to appoint another person and his heirs for ever, marshal proclamator, and barrier of the court. There are four persons who act as cryers to the court; one of them is also court keeper, and another porter of the court; which cryer, court-keeper, and porter, are deputies to the chief proclamator. Their duty is to attend this court, and make proclamations, &c.

CLERK OF THE PAPERS OF THE FLEET. The Fleet being the prison of the court of common pleas, a clerk of the papers is appointed by the warden, who receives and records all commitments and discharges, and all papers in causes in this court, for which any prisoner is detained.

TIPSTAFFS. There are two tipstiffs attendant on this court, who are admitted by deputation from the warden of the Fleet: they attend the judges while sitting in a court, and, in the afternoon at their chambers; and out of term, they attend there morning and afternoon. One of them also attends the lord chief justice at the sittings of *Nisi prius* for Westminster, London, and on the circuits.

COURT OF KING'S BENCH. The court of King's Bench (so called because the king used formerly to sit there in person, the stile of the court still being *coram ipso rege**) is the supreme court of common law in the kingdom; consisting of a chief justice and three *puisne* justices, who are, by their office, sovereign conservators of the peace, and supreme coroners of the land. Yet, though the king himself used to sit in this court, and still is supposed so to do; he did not, neither by law is he empowered to, determine any cause or motion, but by the mouth of his judges, to whom he has committed his whole judicial authority. This court, which is the remnant of the *aula regia*, is not, nor can be, from the very nature and constitution of it, fixed to any certain place, but may follow the king's person wherever he goes; for which reason, all process issuing out of this court in the king's name is returnable "wherever we shall be in England." It has indeed, for some centuries past, usually sat at Westminster-hall, but

* This court is called the queen's bench in the reign of a queen, and during the protectorate of Cromwell it was stiled the upper bench.

might remove with the king to York or Exeter, if he thought proper to command it; and, after Edward I. had conquered Scotland, it actually did sit at Roxburgh. It is termed the *custos morum* of all the realm, and by the plenitude of its power, wherever it meets with an offence, contrary to the first principles of justice, and of dangerous consequences if not restrained, adapts a proper punishment to it.

JURISDICTION. The jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority; and may either remove their proceedings to be determined before its own judges, or prohibit their progress below; it superintends all civil corporations in the kingdom: commands magistrates and others to do what their duty requires in every case, where there is no specific remedy: protects the liberty of the subject, by speedy and summary interposition: takes cognizance both of criminal and civil causes; the former, in what is called the crown side or crown office; the latter, in the plea side of the court. The jurisdiction of the crown side is not intended to be here treated of, but on the plea side it has an original jurisdiction, and cognizance of all actions of trespass, or other injury alleged to be committed *vi et armis*; of actions for forgery of deeds, maintenance, conspiracy, deceit, and actions on the case, which allege any falsity or fraud; all which favour of a criminal nature, although the action is brought for a civil remedy, and make the defendant liable, in strictness, to pay a fine to the king, as well as damages to the injured party. The same doctrine is also extended to all actions on the case whatsoever, except real actions, and has continued to be so for ages; it being surmised that the defendant is arrested for a supposed trespass, which he never has in reality committed; and being in the custody of the marshal of this court, the plaintiff is at liberty to proceed against him for any other personal injury; which surmise the defendant is not at liberty to dispute. These fictions of law are highly beneficial and useful, especially as this maxim is ever invariably observed, that no fiction shall extend to work an injury; its proper operation being to prevent a mischief, or remedy an inconvenience, that might result from the general rule of law. The king's bench is a court of appeal, into which may be removed, by writ of error, all determinations of the court of common pleas, and of all inferior courts of record in England; yet even this court is not the dernier resort of the subject: for, if he be not satisfied with any determination here, he may remove it by writ of error into the court of exchequer-chamber, if the proceedings are by bill,

bill, or into the house of lords if by original. This court grants an *habeas corpus* to relieve persons wrongfully imprisoned; and upon return of the cause, they may be bailed or discharged as the court shall think fit; also writs of *mandamus* to inferior courts, to oblige them to do their duty, prohibitions to keep them within their proper jurisdiction, and may punish an inferior magistrate, or officer of justice, for wilful or corrupt abuse of his authority.

OFFICERS. The officers on the crown side of this court are as follow:

MASTER OF THE CROWN OFFICE. The king's coroner and attorney, commonly called the clerk of the crown, or master of the crown office, takes costs, nominates all special juries on the crown side, takes recognizances, inquisitions upon the death of any prisoner dying in the king's bench, &c.

SECONDARY. The secondary draws up the paper books, and makes up an estreat of all fines, &c. forfeited to the crown.

CLERK OF THE RULES. The clerk of the rules draws up all the rules of the court, and attends the court to take minutes thereof.

OTHER OFFICERS. There are also two other officers; the *examiner*, and *calendar keeper*; and eight *clerks in court*.

PLEA SIDE. The officers on this side are not so numerous as those in the common pleas; but the duties they have to perform, except as to actions real, are nearly the same, and therefore their titles alone are mentioned. The chief clerks, secondary or master, their deputy, marshal, clerk of the rules, clerk of the papers, clerk of the day-rules, clerk of the dockets, clerk of the declarations, clerk of the bails, postea, and estreats, signer of writs, signer of the bills of Middlesex, custos brevium, clerk of the upper treasury, filacer, exigenter, and clerk of the outlawries, clerk of the errors, deputy-marshal, marshal, and associate to the chief justice, train-bearer, clerk of the nisi prius in London and Middlesex, clerks of the nisi prius to the different counties appointed by the custos brevium, crier at nisi prius in London and Middlesex, receiver-general of the seal office; criers, ushers, and tipstiffs.

SEALER OF THE WRITS. On one of the officers mentioned in this list, it may be fit to observe that his duties apply equally to this court and that of common pleas. The office of sealer of the writs is hereditary in the family of the duke of Grafton, but always executed by deputy, or receiver-general.

COURT OF EXCHEQUER. The court of exchequer is inferior in rank both to the king's bench, and common pleas; but is considered in this order in its double capacity, having jurisdiction
both

both in equity. It is a very ancient court of record, established by William the Conqueror, as a part of the *aula regia*, though reformed and reduced to its present order by Edward II. and intended principally to regulate the revenues of the crown, and to recover the king's debts and duties. It is called the exchequer, *scaccarium*, from the chequered cloth, resembling a chess-board, which covers the table there; and on which, when certain of the king's accounts are made up, the sums are marked and scored with counters. It consists of two divisions: the receipt of the exchequer, which manages the royal revenue, and of which an account has already been given; and the judicial part, which is subdivided into a court of equity, and a court of common law. In all its departments, both of revenue and jurisprudence, the exchequer is divided into seven courts: 1. The court of pleas. 2. The court of accounts. 3. The court of receipt. 4. The court of exchequer chamber, being the assembly of all the judges in England, for matters of law. 5. The court of exchequer chamber, for errors in the court of exchequer. 6. The court of exchequer chamber, for errors in the king's bench; and, 7. The court of equity in the exchequer chamber. Of these it is most material here to describe in general the courts of equity and common law.

The court of equity is held in the Exchequer chamber before the lord treasurer, the chancellor of the exchequer, the chief baron, and three *puisne* ones. These are conjectured to have been anciently made out of such as were barons of the kingdom, or parliamentary barons; and thence to have derived their name. The primary and original business of this court is to call the king's debtors to account by bill filed by the attorney general; and to recover any lands, chattels, or profits belonging to the crown. So that, by their original constitution, the jurisdiction of the courts of common pleas, king's bench, and exchequer, was entirely separate and distinct: the common pleas being intended to decide all controversies between subject and subject; the king's bench, to correct all crimes and misdemeanors amounting to a breach of the peace, the king being then plaintiff; and the exchequer to adjust and recover his revenue, wherein the king also is plaintiff. But, as by a fiction almost all sorts of civil actions are now allowed to be brought in the king's bench, in like manner, by another fiction, all kinds of personal suits may be prosecuted in the court of exchequer. For as all the officers and ministers of this have, like those of the other superior tribunals, the privilege of suing and being sued only in their own court, so also the king's debtors and farmers, and all accountants of the exchequer, are privileged to sue and implead all manner of persons in the same court of

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equity that they themselves are called into. They have likewise privilege to sue and implead one another, or any stranger, in the same kind of common law actions (where the personalty only is concerned) as are prosecuted in the court of common pleas.

This gives origin to the *common law* jurisdiction of the exchequer, which was established merely for the benefit of the king's accountants, and is exercised by the barons only of that court, and not the treasurer or chancellor. The writ, upon which all proceedings here are grounded is called a *quo minus*, because the plaintiff, fictitiously states himself to be a debtor and accountant to the king, and alleges that the defendant withholds from him that which is his due, *quo minus sufficiens existit*, &c. that is, by which he is the less able to pay the king his debt or rent. Suits in the exchequer are expressly directed to be confined to such matters only as specially concern the king or his ministers of the exchequer; and the *articuli super cartas* enact that no common pleas be thenceforth holden there, contrary to the form of the great charter; but by the suggestion of privilege any person may be admitted to sue in the exchequer, as well as the king's accountant. The surmise, of being debtor to the king, is mere matter of form, and the court is open to all the nation equally. On the *equity side* too, any person may file a bill on a suggestion never controverted, that he is the king's accountant.

An appeal from the equity side of this court is immediately to the house of peers; but from the common law side, in pursuance of the statute 31 Edw. III. c. 12. a writ of error must be first brought into the court of exchequer chamber; from the determination in which, there lies, in the *dernier resort*, a writ of error to the house of lords.

The court of exchequer chamber has no original jurisdiction, but is only a court of appeal, to correct the errors of other jurisdictions; it was first erected by statute 31 Edw. III. c. 12. to determine causes upon writs of error from the common law side of the court of exchequer. It consists of the lord chancellor, and lord treasurer, taking unto him the justices of the king's bench and common pleas. In imitation of this, a second court of exchequer chamber was erected by statute 27 Eliz. c. 8. consisting of the justices of the common pleas, and the barons of the exchequer; before whom writs of error may be brought to reverse judgments in certain suits originally begun in the king's bench. Into the court also of the exchequer chamber, (which then consists of all the judges of the three superior courts, and now and then the lord chancellor also) are sometimes adjourned from the other courts such causes, as the judges upon argument find to be of great weight
and

and difficulty, before any judgment is given on them in the court below. From all the branches of this court of exchequer chamber, a writ of error lies to the house of lords.

OFFICERS. Under the barons of the exchequer is an officer called the

EXAMINER. He is a commissioner for taking affidavits in the court in London, and within ten miles of the metropolis, in the absence of the barons; he is also empowered to attend and swear those who from imprisonment, or other unformountable impediments, cannot appear before a baron.

There are besides, a *curfitor baron*, a *marshal* and *associate* to the chief baron; *tipstiffs*, *ushers*, *cryer*, *court-keeper*, and *messenger*.

REMEMBRANCERS. There are three remembrancers, one of the king, another of the treasurer, and one of the first fruits. They hold their places by patent. The first two are only to be mentioned here.

KING'S REMEMBRANCER. The king's remembrancer is a principal officer on the equity side of the court. It is his duty to make process against collectors of the customs, &c. enter in his office recognizances acknowledged before the barons, take bonds for the king's debts, &c. and make process upon them, make process upon all informations upon penal statutes (which are entered in his office,) and bills of composition upon them, enter the stallment of debts, keep all conveyances of lands, &c. granted to the king; and all proceedings by English bill are entered there. He also taxes all bills of costs arising in the equity side of the exchequer. His office is executed by deputy, and under him are two *Secondaries*.

CLERKS IN COURT. The business of the suitors passes through the king's remembrancer's office, in which are six *sworn clerks* and twenty *side clerks*; to them solicitors apply for office copies of all proceedings, and by their intervention all the business arising in causes is transacted. No person can be either a sworn or side clerk, who has not *bona fide* served a clerkship in the office for five years. The office is in the Inner Temple.

TREASURER'S REMEMBRANCER. The treasurer's remembrancer makes process by *fiery facias*, and extent for the king's debts, &c. enters upon record if accountants pay their proffers, &c. He has a *deputy*, a *secondary* and *clacker*, three *sworn clerks* and a *bag bearer*. His office is in Somerset-place.

There are also a *clerk of the errors in the exchequer chamber*, and his *deputy*. To the courts belong an hereditary *chief usher*, and a *marshal*, with their *deputies*.

FOREIGN OPPOSER. There is an officer with this title, who opposes all sheriffs, &c. in their accounts of the green wax, viz. of all fines, issues, amerciaments, recognizances, &c. for which process is sent to the sheriff sealed with green wax.

CLERK OF THE ESTREATS. The clerk of the estreats provides that summons for all fines, &c. estreated into the exchequer be issued. He has under him two deputies, and a surveyor of the green wax.

CLERK OF THE NICHILS. The clerk of the nichils makes a roll of the sums in process, for which the sheriff returns nichil, and delivers it to the treasurer's remembrancer.

PLEA SIDE. The officers on the plea side are, *a clerk of the pleas, his deputy*, and four *sworn attorneys*. Under each attorney are four *side clerks*, who act in their respective names and divisions. The office is in Lincoln's Inn Old Square.

COURT OF CHANCERY. The high court of chancery derives its name, *cancellaria*, from the judge who presides in it, called in Latin *cancellarius*, and of whose function, exclusive of those exercised in the court, some account is given at page 2 of this volume.

In the court of chancery, as in the exchequer, there are two distinct tribunals; the one ordinary, being a court of common law; the other extraordinary, being a court of equity.

The ordinary legal court is much more ancient than the court of equity. Its jurisdiction is to hold plea on *scire facias*; to repeal and cancel the king's letters patent, when made against law, or upon untrue suggestions; and to hold plea of petitions, *monstrans de droits*, traverses of offices, and the like, when the king has been advised to do any act, or is put in possession of any lands or goods, in prejudice of a subject's right. On proof of which, as the king can never be supposed intentionally to do any wrong, the law questions not but he will immediately redress the injury; and refers that conscientious task to the chancellor, the keeper of his conscience. It also appertains to this court to hold plea of all personal actions, where any officer or minister of the court is a party. It might likewise hold plea (by *scire facias*) of partitions of lands in coparcenary, and of dower, where any ward of the crown was concerned in interest, so long as the military tenures subsisted: as it now may also do of the tithes of forest land, where granted by the king, and claimed by a stranger, against the grantee of the crown; and of executions or statutes, or recognizances in nature thereof, by the statute 23 Hen. VIII. c. 6. But if any cause comes to issue in this court, that is, if any fact be disputed between the parties, the chancellor cannot try it, having no power to summon a jury; but must deliver the record *propria manu* into the court of king's bench,

bench, where it shall be tried by the country, and judgment given there. When judgment is given in chancery upon demurrer, or the like, a writ of error, in nature of an appeal, lies out of this ordinary court into the court of king's bench : though so little is usually done on the common law side of the court, that no traces are found of any writ of error being actually brought since the fourteenth year of queen Elizabeth, A. D. 1572. In this ordinary, or legal court, is also kept the *officina justitiæ* : out of which issue all original writs that pass under the great seal, all commissions of charitable uses, sewers, bankruptcy, idiotcy, lunacy, and the like ; and for which it is always open to the subject, who may there at any time demand and have, *ex debito justitiæ*, any writ his occasions may call for. These writs (relating to the business of the subject) and the returns to them, were, according to the simplicity of ancient times, originally kept in a hamper, *in hanaperio* ; and the others (relating to such matters wherein the crown is immediately or mediately concerned) were preserved in a little sack or bag, *in parva бага* ; thence has arisen the distinction of the *hanaper* office, and *petty bag* office, which both belong to the common law court in chancery.

But the extraordinary court, or court of equity, is now become of the greatest judicial consequence ; in which the jurisdiction of the chancellor is exercised in its fullest extent. This authority of the chancellor, it is said, was plainly derived from the nature of his employment in the king's household, and from the ministerial powers over the kingdom, with which he thence became invested. By being the king's secretary and chaplain, he enjoyed the peculiar confidence of his master ; and had the sole charge of writing his letters ; and afterwards of issuing writs in the name of the crown. As it became customary that every vassal should hold his fief by a charter from the superior, the power of granting those deeds, throughout the royal demesnes, became the source of great influence ; and, after the Norman conquest, when the nobility were all reduced to vassals of the crown, raised the chancellor to be a principal officer of state.

When the deeds issuing from the crown became numerous, the care of expediting many of them devolved on inferior persons ; and to ascertain their authenticity, the subscription of the chancellor, and afterwards a public seal, of which he obtained the custody, was adhibited. At what time signatures became customary in England to deeds proceeding from the crown, is uncertain. It is probable they were known to the Anglo-Saxons ; but did not become frequent, until the settlement of the Norman princes. From this period the chancellor was considered as having a title to keep the great seal ; but,

from the caprice of the monarch, there occurred some instances in which it was intrusted to a different person, styled the lord keeper. In this manner all important writings, issued by the king, either came through the medium of the chancellor, or lord keeper, or were subjected to his inspection. Before he affixed the great seal to any deed, he was bound to examine its nature; and, if it proceeded upon a false representation, or contained any thing erroneous or illegal, to repeal and cancel it. So early were laid the foundations of a maxim, which, in after days, has been gradually extended, that the servants of the crown are justly responsible for measures which cannot be executed without their concurrence. As the exercise of these powers required a previous examination and cognizance, it gave rise to an ordinary jurisdiction; which, although of great importance, has occasioned no controversy, and appears to have excited little attention.

The extraordinary jurisdiction of the chancellor arose more indirectly from his character and situation. When the king's baron court, confining itself within the rules of common law, had been laid under the necessity of giving a decision, which in its application to particular cases was found hard and oppressive, the party aggrieved was accustomed to petition the king for relief. Applications of this nature were brought before the privy council; and the consideration of them was naturally referred to the chancellor; who, as the secretary of the king, being employed to register the decrees and to keep the records of his baron court, was rendered peculiarly conversant and intelligent in all judicial discussions. A jurisdiction of this nature appears to have been acquired by the same officer in several, if not in the greater part, of the kingdoms of Europe. Such, in particular, was that of the chancellor in France; who, under the kings of the first and second race, had the custody of their seal, and was distinguished by the appellation of the *grand referendaire*.

In England, it should seem that, before the end of the Saxon government, the chancellor was employed in giving redress against the hard sentences pronounced by the judges, of the king's demesne. As those judges, however, had then a very limited authority, his interpositions were proportionably of little importance; but, after the accession of William the Conqueror, when the *aula regis* became the king's ordinary baron court, and drew to itself almost the whole judicial business of the nation, the exercise of such extraordinary jurisdiction began to appear in a more conspicuous light. From this period, the multiplication of law suits, before the grand justiciary,

ciary, produced more various instances of imperfections in the rules of common law ; and, from greater experience and refinement, the necessity of relaxing in the observance of these rules, by the admission of numerous exceptions, was more sensibly felt.

As applications for this purpose became frequent, provision was made in order to facilitate their progress ; and the tribunal, to which they were directed, grew up into a regular form. A committee of the privy council had, in each case, been originally appointed along with the chancellor to determine the points in question. But, as these counsellors paid little or no attention to business of this nature, of which they had seldom any knowledge, their number, which had been arbitrary, was therefore gradually diminished ; and, at last, their appointment having come to be regarded as a mere ceremony, was entirely discontinued. Subordinate officers were, on the other hand, found requisite in various departments, to assist the chancellor in preparing his decisions, and in discharging the other branches of his duty. The authority, however, which was thus exercised by this great magistrate, in order to correct and to supply the most remarkable errors and defects in the ancient rules of law, appears to have still proceeded upon references from the king, or from the privy council. His interpositions depended upon the decisions given by other courts ; and were of too singular a nature to be easily reduced into a system, or to be viewed in the light of a common remedy. It was at a later period, that the chancery became an original court, for determining causes beyond the reach of the ordinary tribunals. This institution, arising from circumstances more accidental than those which produced the jurisdiction above mentioned, does not seem to have pervaded the other European nations, but is, in a great measure, peculiar to England.

According to the feudal policy in the Western part of Europe, all jurisdiction was inseparably connected with landed property ; and actions of every sort proceeded upon a mandate, or commission, from that particular superior, within whose territory the cause was to be tried. If an action was intended before a court deriving its jurisdiction from the king, the plaintiff made application to the crown, stating the injustice of which he complained ; in answer to which, the sovereign ordered the adverse party to appear before a particular court, in order that the cause might be argued and determined. The writ, or brief, issued for this purpose by the king, served not only to summon the defendant into court, but also, in that particular question, to authorize the investigation of

the magistrate. The different barons, in their respective demesnes, issued briefs, in like manner, for bringing any law-suit under the cognizance of their several courts.

In England this mode of litigation was uniformly observed in proceedings before the *aula regis*; and was afterwards adopted in the three courts of common law, among which the powers of the grand justiciary were divided. The primitive writs, upon which any action was commenced, being accommodated to the few simple claims that were anciently enforced in a court of justice, were probably conceived in such terms, as might occur without much reflection. But complaints, upon the same principle of law, being frequently repeated, the same terms naturally continued; so that, by long usage, a particular form of writ was rendered invariable and permanent in every species of action. This preservation of uniformity, although perhaps the effect of that propensity, so observable in all mankind, to be governed on every occasion by analogy, proved, at the same time, of great advantage, by ascertaining and limiting the authority of the judge. From the advancement of property, however, and from the multiplied connexions of society, there arose new claims, which had never been the subject of discussion. These required a new form of writ; the invention of which, in consistency with the established rules of law, and so calculated as to maintain good order and regularity in the system of judicial procedure, became daily a matter of greater nicety and importance.

Applications in such cases was made to the chancellor; who, from a scrupulous regard to precedents, was frequently unwilling to interpose, but referred the parties to the next meeting of parliament. These references, however, as might be expected, soon became burdensome to that assembly; and, by a statute in the reign of Edward I. it was provided, that, "Whensoever, from thenceforth, it shall fortune in chancery that, in one case a writ is found, and in like case, falling under like law, and requiring like remedy, is found none, the clerks in chancery shall agree in making the writ, or shall adjourn the plaintiffs to the next parliament, where a writ shall be framed, by consent of the learned in the law; lest it might happen for the future, that the court of our lord the king should long fail in doing justice to the suitors."

The new writs, devised in consequence of this law, were, for some time, directed to such of the ordinary courts as from the nature of the case, appeared to have the most proper jurisdiction. At length, however, there occurred certain claims

claims, in which, though seeming to require the interposition of a judge, it was thought the common law would not interfere. In these, the chancellor, willing to grant a remedy, and, perhaps, not adverse to the extension of his own authority, adventured to call the parties before himself, and to determine their difference. This innovation is said to have been introduced about the time of Richard II. and for the purpose of supporting a contrivance to elude the statute of *mortmain*, by the appointment of trustees to hold a landed estate, for the benefit of those religious corporations to which it could not be directly bequeathed. The courts of common law could give no countenance to a stratagem so palpably intended to disappoint the will of the legislature; but the chancellor, as a clergyman, was led by a fellow feeling with his own order, to support this evasion; and, pretending to consider it as a matter of conscience, that the trustees should be bound to a faithful discharge of their trust, took upon him to enforce the will of a testator, in opposition to the law of the land.

Having successfully assumed the cognizance of one case, in which he was particularly interested, the chancellor found little difficulty in extending his jurisdiction to others. In these he appears to have acted more from a general regard to justice; and, in consequence of the limited views entertained by the ordinary courts, his interposition seemed immediately necessary. His authority thus grew up imperceptibly: what was begun in usurpation, by acquiring the sanction of long usage, became a legal establishment; and, when it afterwards excited the jealousy of the courts of common law, its abolition was regarded as impolitic and dangerous. After the direction of the chancery had long been possessed by clergymen, who, from their situation, were intent upon the increase of its jurisdiction, it was, upon some occasions, committed to lawyers by profession; by whom its procedure was more digested into a regular system.

From what has been observed, concerning the extraordinary jurisdiction of the court of chancery, there can be no doubt that it was originally distinguished from that of the other courts of Westminster-hall, by the same limits which mark the distinction between common, or strict law, and equity. Its primitive interpositions were intended to decide according to conscience upon those occasions, when the decisions of other courts, from an adherence to ancient rules, were found hard and oppressive. It was afterwards led to interpose in original actions, in order to make effectual those new claims which the ordinary courts accounted beyond the limits
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of their jurisdiction. This first branch of this authority in the court of chancery was therefore designed to correct the injustice, the other to supply the defects, of the other tribunals.

This accordingly seems to have been the universally received idea of that court, which is called a court of equity by every author who has had occasion to mention it. In this view it is considered by lord Bacon, who himself held the office of chancellor, and who, among all his contemporaries, appears to have been best qualified to understand its nature. The same opinion of this court was held by the learned Selden. "Equity," says that author, "is a roguish thing; for law we have a measure; sure; know what we trust to. Equity is according to the conscience of him that is chancellor; and, as that is larger or narrower, so is equity. It is all one, as if they should make the standard for measure a chancellor's foot. What an uncertain measure would this be! One chancellor has a long foot; another a short foot; a third an indifferent foot. 'Tis the same thing in the chancellor's conscience."

The ingenious and acute author of "The Principles of Equity" has adopted this notion concerning the nature of the court of chancery; and disputes with lord Bacon, whether it is more expedient that the equitable jurisdiction, and the jurisdiction according to strict law, should be united in the same court, as in ancient Rome, or divided between different courts, as in England?

In opposition to these authorities, justice Blackstone, a writer who, in a practical point of this nature, can hardly be supposed mistaken, affirms that there is no such distinction between the chancery and the other courts of Westminster; and maintains that the latter are possessed of equitable jurisdiction; while the former, to which however, like other writers, he gives the appellation of a court of equity, is accustomed to decide according to the rules of strict law.

To reconcile these different opinions, it seems necessary to suppose that they refer to different periods; and that both the chancery, and the other courts in question, have, since their first establishment, been subjected to great alterations. This is what, from the nature of things, might reasonably be expected. Lord Bacon and Mr. Selden speak of the court of chancery as it stood in a remote period: Blackstone to one more modern.

The distinction between strict law and equity is never in any country a permanent distinction. It varies according to the state of property, the improvement of arts, the experience of judges, the refinement of a people.

In a rude age, the observation of mankind is directed to particular objects; and seldom leads to the formation of general conclusions. The first decisions of judges, agreeable to the state of their knowledge, were such as arose, in each case, from immediate feelings; that is, from considerations of equity. These judges, however, in the course of their employment, had afterwards occasion to meet with many similar cases; upon which, from the same impressions of justice, as well as in order to avoid the appearance of partiality, they were led to pronounce a similar decision. A number of precedents was thus introduced, and from the force of custom, acquired respect and authority. Different cases were decided, from the view of certain great and leading circumstances in which they resembled each other: and the various decisions, pronounced by the courts of law, were gradually reduced into order, and distributed into certain classes, according to the several grounds and principles upon which they proceeded. The utility of establishing general rules for the determination of every law, became also an object of attention. By limiting and circumscribing the power of a judge, they contributed to prevent his partiality in particular situations; and by marking out the precise line of conduct required, from every individual, they bestowed upon the people at large, the security and satisfaction arising from the knowledge of their several duties and rights.

But although the simplification of decisions, by reducing them to general principles, was attended with manifest advantage, it was, in some cases, productive of inconvenience and hardship. It is difficult, upon any subject, to establish a rule which is not liable to exceptions. But the primitive rules of law, introduced by inexperienced and ignorant judges, were even far from attaining that perfection which was practicable. They were frequently too narrow; and frequently too broad. They gave rise to decisions, which, in many instances, fell extremely short of the mark; and which, in many others, went far beyond it. In cases of this nature, it became a question, whether it was more expedient, by a scrupulous observance of rules, to avoid the possibility of arbitrary practice, or, by a particular deviation from them, to prevent an unjust determination? In order to prevent gross injustice under the sanction of legal authority, an evil of the most alarming nature, it was thought advisable, upon extraordinary occasions, to depart from established maxims, and, from a complex view of every circumstance, to decide according to the feelings of justice. The distinction between strict law and equity was thus introduced; the former comprehending the established rules; the latter the exceptions made to those rules in particular cases.

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But when questions of equity became numerous, they too were often found to resemble one another; and requiring a similar decision, were by degrees arranged and classed according to their principles. After a contract, for example, had been enforced by a general rule, it might happen, on different occasions, that an individual had given a promise, from the undue influence of threats and violence, from his being cheated by the other party, or from advantage being taken of his ignorance and incapacity. On every occasion of this nature, an equitable decision was given; and, by an exception to the common rule of law, the promiser was relieved from performance. But, the remedy given in such cases being reduced into a regular system, could no longer be viewed in the light of a singular interposition; and, by the ordinary operation of law, every contract extorted by force, elicited by fraud, or procured in consequence of error and incapacity, was rendered ineffectual. Every primitive rule of justice was productive of numerous exceptions; and each of these was afterwards reduced under general principles; to which, in a subsequent period, new exceptions became necessary.

Law and equity are thus in continual progression; and the former is constantly gaining ground upon the latter. Every new and extraordinary interposition is, by length of time, converted into an old rule. A great part of what is now strict law was formerly considered as equity; and the equitable decisions of this age will unavoidably be ranked under the strict law of the next.

Although the chancellor, therefore, was originally intrusted with the mere province of equity, the revolutions of time have unavoidably changed the nature of his jurisdiction. He continues to exert an authority in all such claims as were anciently taken under his protection; but his interpositions concerning them are now directed by general principles, to which various exceptions, according to equity, have since been introduced. He continues, likewise, those modes of procedure which were suitable to his primitive situation, and adapted to such investigations as the purpose of his establishment required.

The ordinary courts of Westminster-hall have, on the other hand, extended their jurisdiction beyond its ancient limits. Though they originally did not venture to deviate from the rules of strict law, the improvements of a later age have inspired them with a more liberal spirit; and have rendered their decisions more agreeable to the natural dictates of justice.

Thus the court of chancery has been gradually divesting itself of its original character, and assuming that of the courts
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of common law ; while those tribunals have been, in the same proportion, enlarging their powers, and advancing within the precincts of equity.

According to Blackstone, the essential difference at present, between the chancery and the courts of common law, consists in the modes of administering justice peculiar to each. It may deserve to be remarked, that these differences are such as would naturally arise between courts originally distinguished by having the separate departments of strict law and equity.

1. From the mode of proof adopted by chancery, all questions which require a reference to the oath of a party are appropriated to that court. This peculiarity arose from an opinion, entertained by early judges, that it was a hardship to compel any person to furnish evidence against himself. But the view suggested by equity was more liberal and refined. It appeared unjust that a defendant should refuse to satisfy a claim, which he knew to be well founded ; and, unless he was conscious of having fraudulently withheld performance, he could suffer no damage by his judicial declaration.

2. The chancery alone is competent for taking proofs by commission, when witnesses are abroad, or shortly to leave the kingdom, or hindered by age or infirmity from attending. In the courts of common law, the method of trial by a jury was universally established ; and as this form required that the witnesses should be examined in court, the interposition of equity was indispensable to authorize their examination in absence.

3. Instead of awarding damages for neglecting to fulfil a contract, the court of chancery has power to order specific performance. From the narrow principles embraced, in early times, by the courts of strict law, no complaint was regarded, unless the plaintiff had suffered in his pecuniary interest ; and consequently, upon the breach of contract, nothing further could be claimed than reparation of the damage incurred. In a more equitable view, it appeared that every innocent and reasonable purpose of the contractors ought to be enforced ; although, perhaps, the loss arising from the failure of performance could not be estimated in money. A court of equity, therefore, was accustomed to enjoin, that a contract should be expressly fulfilled.

4. Two other branches of power are mentioned as peculiar to the court of chancery : the one to interpret securities for money lent. This arose from the prohibition, introduced by the canon law, of taking interest for the loan of money ; which occasioned an evasion, by means of what is called a *double bond*. The true construction of this deed, according to the intention of the parties, and in opposition to the words, was beyond the jurisdiction

jurisdiction of the ordinary courts. The other branch of power alluded to, was that of enforcing a *trust*. This, as formerly observed, was intended to evade the statute of *mortmain*; and afforded the chancellor the first ground for assuming his extraordinary authority in original actions.

Considering the origin of the court of chancery, there was no reason to expect that its jurisdiction would be separated from that of the ordinary courts by any scientific mode of arrangement. It was the offspring of accidental emergency; being merely a temporary expedient for granting an immediate relief to those who had suffered from legal injustice. Supposing that, after it became a permanent and regular tribunal, it had remained upon its original footing, the advantages likely to have resulted from it may reasonably be called in question. That one court should have a jurisdiction according to strict law, and another according to equity; that the former should be obliged, with eyes open, to pronounce an unjust sentence, in conformity to an old rule, leaving parties to procure relief by application to the latter; that, in a word, the common law tribunal should be empowered to view the law-suit only upon one side, and the court of equity upon a different one; such a regulation appears in itself no less absurd and ridiculous, than its consequences would be hurtful, by producing a waste of time, and an accumulation of expences; not to mention the uncertainty and fluctuation of conduct arising from the inaccurate and variable boundaries, by which equity and strict law must ever be distinguished. Even according to the later form which the chancery has assumed, and by which it has appropriated causes of a very peculiar description, or such as require a singular mode of procedure, its line of partition from the ordinary civil courts may be thought rather arbitrary and whimsical. But, however the present distribution of the judicial powers may be deficient in speculative propriety, it seems in practice to be attended with no inconvenience. The province belonging to each of the courts of Westminster-hall appears now to be settled with an exactness which prevents all interference or embarrassment; and there is, perhaps, no country in the world where equity and strict law are more properly tempered with each other, or where the administration of justice, both in civil and criminal matters, has a freer and more uniform course.

From this court of equity in chancery, as from the other superior courts, an appeal lies to the house of peers. But there are these differences between appeals from a court of equity, and writs of error from a court of law: 1. That the former may be brought upon any interlocutory matter; the latter upon nothing.

nothing, but only a definitive judgment. 2. That on writs of error, the house of lords pronounces the judgment; on appeals it gives direction to the court below to rectify its own decrees.

The court of chancery sits in term in Westminster-hall; in vacation, in the hall of Lincoln's Inn.

OFFICERS. The principal officers belonging to the court of chancery are the following:

MASTER OF THE ROLLS. The master of the rolls, anciently called *Gardein des Rolles*, *Clericus Rotulorum*, or clerk of the rolls, and now stiled in his patent, *Clericus parve Bage et custos rotulorum*, &c. is chief of the twelve masters in chancery, chief clerk of the petty bag office, and a very ancient judicial officer. His appointment is grantable by letters patent, formerly at the king's pleasure, but now always for life: it has been filled by spiritual persons. By a patent of Edward III. the master, when a clergyman, was appointed and installed in the house of the rolls in Chancery-lane, by the lord chancellor. In his judicial capacity, besides what he does as assistant to, or associate with, the lord chancellor when present, or as deputy to him when absent, many causes are set down before him to hear and decree, which he usually does on certain days appointed, commonly in the presence of one or more masters in chancery, and sometimes in their absence, and either in court, at his own house, or the chapel of the rolls; and all such orders and decrees as are made by him, are drawn up and entered as made by the court, but they cannot be enrolled, till signed by the lord chancellor, who has also the power to discharge or alter them. He is also the keeper of all records, judgments, sentences, and decrees given in chancery. It appears by the statute 14 Hen. VIII. c. 8. that the master of the rolls has the giving of the offices of the six clerks in chancery; he has also the appointment of the clerks of the petty bag office, the two chief examiners, the usher of the court of chancery, and some others. And he has divers prerogatives by statute, commission, and prescription. The emoluments of the office consist in 1200*l.* a year annexed to it by statute 23 Geo. II. c. 25. in the occupation of the house belonging to his office in Roll's yard, Chancery-lane; and in the rents of a circumjacent estate, amounting together, it is supposed, to somewhat less than 4000*l.* per annum. The officers under the master of the rolls are, a chief and under secretary, a train-bearer, usher of the court, deputy usher, tipstaff, and porter.

MASTERS IN CHANCERY. These officers are twelve in number, including the master of the rolls, who is their chief, and the accountant general. They are assistants or associates to the
chancellor

chancellor and master of the rolls, sit with them in court by turns, usually two at a time; and references touching accounts, matters of practice, &c. are directed to them, upon which they make their reports; they also administer oaths to those who swear to answer, take affidavits, and acknowledgments of deeds, recognizances, &c. They were formerly stiled *clerici de prima forma*, and were to be grave and ancient clerks, skilful and of long experience in the practice of the court; for they had equal authority with the chancellor in forming the *brevia magistralia*, in which, unless they all agreed, they were to go to parliament. They were anciently members of the king's court, allowed robes out of the royal wardrobe, and dieted as part of the household, for whom special purveyance was made; and in this quality, they attend the house of lords, and have a right to assist at coronations. By statute 13 Chas. II. a public office is to be kept near the rolls, for the masters in chancery, in which they, or some or one of them, shall constantly attend for the dispatch of all matters incident to their office, (references upon accounts, and insufficient answers only excepted,) from seven o'clock in the morning, till twelve at noon, and from two in the afternoon till six at night; by this act there are fees appointed; and tables of the fees are to be put up in their office, which is now held at an elegant building erected for that and other purposes in Southampton-buildings, Chancery-lane. Each master has a clerk; a salary of 200*l.* per annum issues from the bank for each master; but their further emoluments depend on the portion of business referred to them.

MASTERS EXTRAORDINARY. These are merely persons empowered by the court to take affidavits in the country, and they are appointed by commissions, which are obtained without difficulty, and at a small expence,

ACCOUNTANT GENERAL. In former times each master in chancery was accustomed to keep in his hands the monies paid into court in the causes which were referred to him; but some losses and many inconveniences having arisen to the suitors, the accountant general was appointed in pursuance of an act of parliament. He does all such matters and things, relating to the delivery of the suitor's money and effects, into the bank, and taking them out, and keeping accounts with the bank, as by the orders of the court were to be done by the masters and usher; who, on the passing of the act, were to make up their accounts with the accountant general, and pay into the bank all monies remaining in their hands, to be placed to his account; and to transfer and assign to him all the securities for money which they held in trust for the suitors of the court. The accountant general cannot, however, meddle with the actual

receipt

receipt and custody of the suitors money or effects, but only keeps the account with the bank; the governor and company of which are answerable for all money received by them, and not the accountant general. He holds his office subject to the further regulation, and during the pleasure of the court, which is generally for life. Forging the name of the accountant-general to any certificate, in order to the receiving any of the suitors money, is by the statute made felony. The office is in Chancery-lane.

SIX CLERKS. These officers are of ancient establishment, and they were heretofore spiritual persons, and they have been specially assigned, amongst other officers, to attend at the king's coronation. They are principally concerned in matters of equity; and transact and file all proceedings by bill and answer, and also issue some patents that pass the great seal, as pardons of men for chance medley, patents for ambassadors, sheriffs' patents, and some others; all which matters are transacted by their under clerks, or others by them appointed. They likewise sign all office copies in order to be read in court, and also certificates, and attend the court in term, by two at a time, at Westminster, to read the pleadings. The business of the office is done by their under clerks, each of whom has a seat in the office, and whereof every six clerk has a certain number, usually about ten, besides two waiting clerks in each division, who are all accountable to their respective six clerks for the business they transact. At this day they employ deputies in their absence (usually a sworn clerk, or a waiting clerk of their own division) to file the proceedings, and sign office copies and certificates.

SWORN AND WAITING CLERKS. In order to be qualified for clerks in court, a person must be articled to a sworn clerk, and serve him five years in the six clerks office, and at the expiration of their clerkships, they are to be examined by the master of the rolls, and, if approved of, they are admitted and sworn before him, to the faithful execution of their office, which constitutes them sworn clerks. All suitors in the court must employ one of the sworn, or one of the waiting clerks, to act as clerk in court. They make out all writs both special and common, and all process (except *subpoenas*) in all causes, depending on the equity side, wherein they are respectively employed. They claim a right to, and, as occasion requires, have, the custody of all records relating to causes there, of which they make copies for their clients. They also ingross bills, answers, &c. (if not done by their clients or solicitors), attend the court and masters in chancery as occasion requires, draw and enroll the decrees of the court, make copies of all depositions taken

by commission in the country, &c.; and they attend, by themselves or agents, not only in term time, but also in the vacation.

REGISTER. The register holds his place by letters patent, and has several deputies under him, who sit in court by turns, to take notes of all orders and decrees, in pursuance of which they draw up the orders, which are also entered in the office: having been first duly passed by a deputy register. The office of register also embraces some other duties. The business is transacted under the same roof with the six clerks. Office in Chancery-lane.

MASTER OF THE SUBPOENA OFFICE. In this office are made out all writs of subpoena, both special and common. The office is granted by letters patent: and the business is transacted by deputies. It is in Chancery-lane.

REGISTER OF AFFIDAVITS. This officer files, registers, and makes copies of affidavits, which copies are signed by himself or his deputy; and no counsel, clerk, &c. can give any affidavit in evidence that is not filed and registered in the affidavit office. It is granted by letters patent, and situate in Southampton-buildings, Chancery-lane.

EXAMINERS. There are two examiners, who have under them several deputies, and copying clerks: they, by themselves or deputies, examine witnesses produced on either side (being first sworn by a master on interrogatories), take their deposition, and make out copies of them, and of the interrogatories, where not by commission in the country. And all depositions are to be kept private in the office till publication is passed. The examiners' office is in Rolt's-yard, Chancery-lane.

CURSTORS. These officers are of a very ancient institution; they are in number twenty-four, and were incorporated by queen Elizabeth. They make out all original writs in chancery, returnable in the common pleas, &c., and amongst these the business of the several counties is severally distributed. Their office is in Chancery-lane.

PETTY BAG. The principal clerks of the petty bag are three in number, (of whom the master of the rolls is chief,) and have several clerks under them. They transact a great variety of business, which requires knowledge and experience in the practice of the law; and have the making out of writs of summonses to parliament; and commissions directed to commissioners of every shire for assessing subsidies and taxes, *Conges d'Élire* for bishops, patents of customers, gaugers, controllers, and almegers, *liberates* upon extent of statute staples, and recovery of recognizances forfeited, and all *elegits* upon them. All offices found *post mortem* are brought to the petty bag office to be filed. Here are entered all pleadings in chancery concern-

ing the validity of any patent, or other thing which passes the great seal; which pleadings are according to the course of the common law. And if any question arise about the acknowledgment of any deed before the lord chancellor, or any other officer of the court, it is to be here prosecuted; and all statutes and recognizances taken before any officers of the court to that purpose deputed, are transmitted hither. Also all suits for or against any privileged person in the court, are brought and proceeded on only in this office. There are also various other duties. The petty bag office is in the Roll's-yard, in Chancery-lane.

CLERK OF THE CROWN. The clerk of the crown in chancery is, by himself or deputy, continually to attend the lord chancellor or lord keeper; to write and prepare for the great seal of England special matters of state, by commission, or the like, either immediately from his majesty, or by order of his council, as well ordinary as extraordinary, as commissions of lieutenancy, of justices itinerant, and of assize of *oyer and terminer*, of gaol delivery, and of the peace, with their writs of association. Also, all general pardons. He sits in the lords' house in parliament time; and into his office, the writs of parliament, made by the clerks of the petty bag, with the names of the knights and burghesses elected thereupon, are returned and filed. He has also the making of all special pardons and writs of execution upon bonds of statute staple forfeited. This office is also in the Rolls-yard.

CLERK OF THE HANAPER. The function of this ancient officer is to receive all the monies due to the king, for the seals of charters, patents, commissions, and writs; as also fees due to the officers for enrolling and examining them. He is obliged to attend the lord chancellor daily in the term, and at all times of sealing, having with him a leather bag, wherein are put all charters, &c. after they are sealed, which bags being closed with the lord chancellor's private seal, are delivered to the controller of the hanaper.

Beside these, there are many officers belonging to this court, whose duties are designated by their names; as the *clerk of enrolling letters patent*; the *clerk of the faculties for dispensations, licences, &c.*; *clerk of the presentations for benefices of the crown in the chancellor's gift*; *clerk of appeals*, on appeals from the courts of the archbishop to the court of chancery; and there are others who are constituted by the chancellor's commission or letter, and attend him for particular purposes, and on particular occasions; such as the sealer of writs, &c. Others are constituted by patent from the king; as the clerks for writing licences of alien-

ation, writs of licences of protection, and many others of like nature; and some are ordained by parliament to be nominated and constituted by the king's letters patent; such as the writer and enroller of confirmations of all licences and dispensations, as shall be brought into chancery under the archbishop of Canterbury's seal, &c.

The following officers are in immediate attendance on the person of the chancellor; his principal secretary, purse-bearer, deputy purse-bearer, secretary of bankrupts, deputy-secretary, clerks, secretary of the presentations, secretary of the commissions of the peace, secretary of lunatics, receiver of the fines, secretary of the decrees and injunctions, secretary of the briefs, usher of the court, deputy-serjeant at arms, deputy messenger or pursuivant, deputy gentlemen of the chamber, usher of the hall, clerk of the court, court-keeper, tipstaff, and running porter.

BANKRUPTS. The jurisdiction of the court of chancery in matters of bankruptcy is not specified in this place; it will be noticed in another division of the work.

In these four last mentioned courts, of common pleas, king's bench, exchequer, and chancery, the business is transacted, except as to the verbal statement of the merits to the court itself, by attorneys or solicitors, and the pleading or statement of the cause is confided to advocates, who are either barristers or serjeants at law.

ATTORNEYS OR SOLICITORS. An attorney is one who is appointed to do any thing in the *turn*, stead, or place of another. In chancery and in the exchequer, those who do the business of attorneys are termed solicitors. No person can act as an attorney or solicitor, unless he shall have been bound for five years. The articles are on a stamp of 100*l.* and every person articulated to serve as a clerk to any attorney or solicitor, must within three months cause an affidavit to be made of the actual execution of the contract which is to be filed in the court where the attorney or solicitor is enrolled. The clerk must, during the whole time specified in the articles, be actually employed by his master or his agent, in the business of an attorney or solicitor; and before he is admitted, must cause an affidavit of himself, or of the attorney or solicitor to whom he was bound, to be made and filed like the other, that he has actually and really served and been so employed. One of the judges in the courts of law, and the master of the rolls, or two masters in chancery, and a judge of the other courts of equity respectively, are directed to examine any person touching his fitness and capacity to be an attorney or solicitor.

tor: if approved of, he is sworn in open court, to demean himself honestly in his practice; and he also takes the oaths of allegiance, supremacy, and abjuration.

PRIVILEGE. The chief privilege of an attorney is, that he cannot be arrested on any process for the purpose of being held to bail; this indulgence is granted on a supposition that he must always be present in court, transacting the business of his clients, and therefore, in the allowance of it, the judges always take care to apply that cause to their decision. They will not discharge an attorney who is arrested, or allow his plea of privilege, unless he was, at the time when the action was commenced, *bona fide* a practising attorney, and had duly taken out his annual licence, which is on a stamp of 10*l.* in London, and 6*l.* in the country. An attorney, in respect of his attendance at the court, cannot be pressed for a soldier; but he is not privileged from serving in the militia, or finding a substitute. He cannot be made constable though there be a custom that every inhabitant shall be chosen in his turn; and, in general, it is said that he is not to be elected into any other office against his will; as to the office of overseer of the poor, or churchwarden, or any office within a borough.

On the other hand, when proceedings are against an attorney by bill, the party suing him can obtain judgment much sooner than where he proceeds by ordinary process; and an attorney cannot bring an action for his bill of costs for business in any court, until a month after he has delivered it to his debtor, signed with his name. Attorneys are also under the summary jurisdiction of the courts wherein they practise, and subject to be struck off the rolls for mal-practice, or for gross ignorance; and if their clients suffer by their ignorance or neglect, they may recover from them damages to the amount. And no attorney in confinement for debt, or any other cause, can commence or prosecute any suit for any other person; though it is held that he may proceed in those which he had previously commenced; and he may sue for any debt due to himself.

SPECIAL PLEADERS, DRAFTSMEN IN EQUITY AND CONVEYANCERS. Under these several denominations many gentleman practise, who are neither attorneys, nor at the bar; but many gentlemen at the bar exercise also these branches of the profession. *Special pleaders* are they who prepare drafts of all the pleadings in a cause at law, from its commencement to its close; and they are accurately acquainted with all the decisions of the courts relative to points of practice, and to those questions which are likely to arise in the trial of causes. Their assistance therefore is eminently serviceable to attorneys, and their offices are considered the best schools in which students can acquire

an accurate knowledge of the common law. *Draftsmen in equity* are the same with respect to the equity courts which special pleaders are to those of common law: and *conveyancers* are employed in the preparation of every species of deed, contract, and will, and in perusing drafts laid before them, in order to ascertain whether the title, securities, and terms of obligation are sufficient. All these, by a late act of parliament, are obliged to take out an annual certificate on a 10/. stamp.

STUDENTS. Before any person can be admitted to practise as an advocate, he must be regularly entered in, and be a member of, one of the inns of court five years, and must have kept his commons in such inn twelve terms. In favour of those who have taken a degree of M. A. or LL.B. at an English university, three years are allowed as sufficient to be a member of the inn, but the twelve terms must be duly kept. The fee on admission to an inn is about 37/. of which a great part is a stamp duty; and those students who have not taken a degree deposit 106/. to pay their fees on being called to the bar; but this sum, should they ever renounce their original intention, they are at liberty to draw out again. Those who have taken a degree are excused from making the deposit at first; but their fees, on being called, are of the same amount; and each member of an inn of court enters into a bond, with two housekeepers, or one member of the same society, for the due payment of his fees, and observance of the rules of the inn. Anciently, there were many ceremonies, and certainly not altogether unprofitable ones, of readings, mootings, and other exercises, preparatory to a call to the bar; but as these are now discontinued, or, if nominally observed in some inns, considered as mere matter of sport, it is not necessary to dwell on them. Instead of any public demonstration of ability, the student is now to rely on his industry for future support, and on his exertions after he is become an advocate for fame; in the mean time his hopes must depend on the use he makes of his time in his private study, his attendance in the courts, and in the office of the special pleader, the draftsman, or the conveyancer.

INNS OF COURT. As the Inns of Court are objects of much curiosity, some account of them in this place will not be improper.

It has been before observed, that previous to, and immediately after, the Norman conquest, the knowledge of the laws of England, as well as the administration of them, was chiefly confined to ecclesiastical persons, the unsettled state of the kingdom obliging the nobility and gentry, rather to addict themselves to the practice of arms, than the attainment of literature; and in consequence it most probably happened, that

that the decision of controversies in civil cases was then so frequently by combat, and in criminal ones by fire and water ordeal. On this account likewise, many of the justices of the king's courts, as well as those called itinerant, before the time of Henry III. were bishops, abbots, deans, canons in cathedral churches, archdeacons, &c.; and the chancellorship was exercised by clergymen even so late as the reign of Henry VII. But when by magna charta it was ordained, that "common pleas should not thenceforth follow the court, but be held in some certain place," and that certain place was fixed at Westminster-hall; this establishment, gave rise to the inns of court, where the whole body of common lawyers was collected, as stations most proper for their studies, conference, and practice. These colleges of common law soon attracted the attention and gained the approbation of government: the study of the law was ordered to be carried on in them alone; and means were taken for placing them under the regulation of the judges.

These inns, or *hospels*, as they were anciently called, were from their first institution divided into two sorts, denominated *inns of court*, and *inns of chancery*. The former were so named from the students in them being to serve the courts of judicature; or because these houses anciently received the sons of noblemen and the better sort of gentlemen, "who (says Fortescue) did there not only study the laws, to serve the courts of justice and profit their country, but did further learn to dance, to sing, to play on instruments, on the sabbath-days, and to study divinity on the festival, using such exercises as they did who were brought up in the king's court:" so that these hostels being nurseries or seminaries of the court, taking their denomination from the end wherefore they were instituted, were called inns of court. The expences were very considerable, and the gentility of the students was proved by the declaration of their paternal stock, and the emblazonment of their arms; customs which are still continued. The inns of chancery were so called, probably because they were appropriated to such clerks as chiefly studied the forming of writs, which was the province of the cursitors, and such as belong to the courts of common pleas and king's bench. These formerly were also a kind of preparatory houses for younger students, where many were entered before they were admitted to the inns of court.

THE INNER TEMPLE. The Temple is well known to have taken its name from that gallant, religious, military order, the Knights Templars, who came into England in the reign of Stephen. Their first house was in Holborn, near the site of the present Southampton-street, and was called the Old Tem-

ple ; but in the succeeding reign they began the foundation of a nobler structure, opposite the end of Chancery-lane, then called New-street, which, to distinguish it from the former, was called the New Temple. This occupied all that space of ground from the monastery of the Carmelites, or White Friars, in Fleet-street, westward to Essex house, without Temple Bar, where Essex-street now stands, and some part of that too, as appears by the first grant of it to Sir William Paget, by Henry VIII. That the Templars then seated themselves at the New Temple, is evident from the dedication of their church, in the year 1185 ; and they continued till the suppression of their order, in 1310. Between these two periods the church was again dedicated, viz. in 1240, probably on account of the greater part being re-edified. On the dissolution, the estates, together with the house in London, devolving upon the crown, Edward II. in 1313, bestowed the latter on Thomas earl of Lancaster. After that nobleman's attainder, a grant was made to Adomar, or Aimer de Valence, earl of Pembroke, by the same monarch, of " the whole place " and houses called the New Temple, at London, with the " ground called Fiquer's Croft, and all the tenements and rents " with the appurtenances that belong to the Templars in the " city of London and suburbs thereof, with the land called " Flete Croft, part of the possessions of the said New Temple." From Aimer de Valence this structure came into the possession of Hugh le de Spencer the younger ; and on his execution, in the first year of Edward III. the right once more reverted to the crown. Here it would probably have continued ; but by a decree, which bestowed generally the lands of the Templars on the hospitals of St. John of Jerusalem, the above monarch granted this mansion to the knights of that order in England. These possessed it in the eighteenth year of his reign, when they were forced to repair the Temple bridge ; but they soon after demised it for the rent of ten pounds per annum, to certain students of the common-law, who are supposed to have removed from Thave's-inn, in Holborn. While the Temple was a monastic institution, such was its rank and importance, that not only parliaments and general councils frequently assembled there, but it was a sort of general depository or treasury for the greatest persons in the nation, as well as the place where many of the crown jewels were kept. Soon after the damage committed by Wat Tyler, but at what particular period is not known, the students in this seminary so far increased in number as to occasion their division into two separate bodies, called the Society of the Inner Temple, and the Society of the Middle Temple, who had

two halls, &c.; but continued to hold their houses as tenants to the knights hospitallers, till the general suppression, in the reign of Henry VIII. and, after this event, for some time, of the crown by lease. In the sixth year of the reign of James I. all the buildings of the two Temples were granted by letters patent, bearing date at Westminster, 13th August, by the name of the inns and capital messuages, commonly known by the names of the Inner Temple and Middle Temple, otherwise the New Temple, London, to Sir Julius Cæsar, knight, then chancellor and under treasurer of the exchequer, Sir Henry Montague, knight, recorder of London, William Towse and Richard Dalton, esqrs. treasurers of the said inns of court, and Sir John Boyse, knight, Andrew Grey, Thomas Farmer, Ralf Radcliff, and others, esqrs. then benchers of these houses; to have and to hold the said mansions, with the gardens and appurtenances, unto the said grantees, their heirs and assigns, for ever, for lodgings, reception and education of the professors and students of the laws of this realm; yielding and paying to the said king, his heirs and successors, for each mansion, the sum of ten pounds yearly.

INNER TEMPLE HALL. The Hall is supposed by Dugdale, from the form of the windows, to have been built near the age of Edward III. The south front was however erected about the year 1740, the old front having been recently destroyed by a great fire, which does not appear to have reached the north side, nor the roof of the building. A semi-hexagonal window, in the south front, has been new cased with stone on the outside, but has escaped the ravages of the flames within, and retains its original form. The contracted space on which the hall stands, admitted of no great exertion of skill on the part of the architect: there is consequently little either to censure or approve. The inside of the hall retains but a small portion of its antiquity. The most prominent features are the very small, and truly Gothic windows on the north side. They have the character of a very early style of building, most probably as ancient as that of Edward III. The room is very well proportioned, though small: the ceiling has a Gothic curve, and is supported by six ribs in the same bend; these spring (which is somewhat singular) irregularly from the new piers on the north side, as well as from the south or old front. The ribs are ornamented with grotesque figures, and the spaces between, in the ceiling, are filled up with large uncouth forms of roses, in chiaro oscuro. At the lower end of the room is a neat screen supported by four pillars of the Tuscan order. On the right of the passage, at the grand entrance, are two very ancient apartments,

ments, that appear to have been out-offices; they are ceiled with groined arches, and the Gothic windows are in part blocked up: they denote the full extent of the ancient buildings belonging to this hall. Between the two ancient windows at the upper end of the hall, within a Gothic compartment, is a large allegorical picture, painted by Sir James Thornhill; who has introduced the story of Pegasus, in compliment to the crest of the society. It appears to be one of his best productions. Beneath are whole lengths of William and Mary, queen Anne, Coke, and Lyttleton, in their robes. At the upper end of the hall is an entrance to a handsome spacious parlour lined with oak, and decorated around, on the upper part of the wainscot, with the arms of the various readers of the society, emblazoned in small compartments, from the time of Henry VI. to the present period. This room is called the parliament chamber: in it, the Treasurer and benchers of the society meet to transact their business, which from hence is called parliamentary. Through this room is the way to several handsome apartments appropriated to the purposes of a library, which, by several donations, is furnished with books of great value. This repository is open to students and others, on application to the librarian, from ten in the morning till one; and in the afternoon from two till six. It contains also a large and curious collection of manuscripts.

Many of the courts and buildings in the Inner Temple are spacious and elegant; the garden commands a beautiful view of the Thames, and is a favourite walk. In ancient times, Christmas, and some other festivals and grand occasions, were celebrated with masques and revels; but these have been long discontinued.

ARMS. The armorial bearing of the Inner Temple, assumed about the time of James I. is Pegasus.

THE MIDDLE TEMPLE. The history of the Middle Temple is included in that of the Inner Temple, the constitutions of the two were, however, somewhat different.

HALL. The Hall of the Middle Temple is justly celebrated. Of the outside it is observed, that its effect is lost for want of space, and that it is disgraced by some incongruous modern additions; but on entering the building the eye receives every gratification from an assemblage of the best disposed parts in the Gothic style of building, that could have been selected, and which are preserved with a degree of care and attention highly creditable to the members of the society. The length of this noble room, including the passage, is about one hundred feet, the width about forty. The height of the roof, which is of oak highly wrought, is well proportioned to the general dimensions of the building, and perfectly satisfies the eye of the

the critical observer. The roof consists of eight principal rafters, projecting from the side walls to support it; they reach the summit by three different curves, are richly carved and moulded, and have at the extremity of each curve a bold pendant ornament. There are also Gothic ribs, which, springing from each of the principal rafters, give a richness to the whole design. The spacious windows rising between each rafter, are decorated with coats of arms, in stained glass, of the various noblemen and gentlemen who have been members of the society. The hall having fallen to decay, the rebuilding was begun in 1562, when the celebrated Plowden was constituted treasurer for the work: it was finished in 1572, four years after he quitted that office, but he voluntarily consented to superintend it, till completed. At the west end is a spacious Gothic window, decorated in the same style with the others, beneath which are several whole length portraits in oil, as large as life, viz. in the centre, Charles I. on horseback, with his page holding his helmet, Charles II. and queen Anne on his right, and William III. and George I. on his left. Over the passage entrance, is a handsome music gallery, but its use has long been discontinued. It is equal in width to the hall, and about nine feet deep; decorated with various pieces of armour, consisting of breast-plates, helmets, &c. which, though evidently not more ancient than the time of Charles II., have been by some inconsiderately described as belonging to the Knights Templars. The screen beneath this gallery was erected in the seventeenth year of queen Elizabeth. It is very richly carved in oak, with no regularity of order or style, but is in a kind of degenerate Gothic, and supported by six Doric fluted pillars, an order very much in use at that period. Beneath the windows on each side of the hall, are ranged, in small compartments in oak, the arms and names of the various readers, from Richard Swaine, in 1597, to the present period; they are still annually elected, and the place is preserved, but the lectures have long since been discontinued.

GATE. The Middle Temple gate was erected on a singular occasion. About the year 1501, Sir Amias Powlet thought fit to put Cardinal Wolsey, then parson of Lymington, into the stocks. In 1515, being sent for to London by the cardinal, on account of that ancient grudge, he was commanded not to quit town till further orders. In consequence he lodged five or six years in this gateway, which he rebuilt; and, to pacify his eminence, adorned the front with the cardinal's cap, badges, cognizance, and other devices.

LIBRARY. The library was erected, as appears from the date over the door of the stair-case, in 1625. It contains a
small

small number of ancient books, which were the bequest of Sir Robert Ashley, in the year 1641, and some manuscripts. It contains two globes, curious on account of their antiquity, being made in the reign of Elizabeth.

SOCIETIES. The society of the Middle Temple, as well as the Inner Temple, consists of benchers, or such as have been readers, anciently called *apprentices* of the law, members, barristers, and students; formerly denominated *utter* barristers and *inner* barristers, being students under seven years, and all of whom had their commons in the hall. The government of the society is vested in the benchers, whose general meetings to transact business are, and anciently were, dignified with the name of *parliaments*. The mode of holding them is described as follows: first the benchers only who have been readers meet in the parliament chamber, which is at the lower end of the hall, and take their places according to seniority. Then the treasurer, for the time being, sits at the table bare-headed, and reads petitions, or proposes such other subjects as are to be discussed; the under treasurer standing by as an attendant. If a difference of opinion occurs, the votes are taken separately, beginning at the youngest, and the majority determines it. Formerly, none who had been called to the bench to read attended these parliaments till they had filled the office of reader; but that objection was afterwards dispensed with. All new laws passed by the parliament are notified to such inferior members of the house as are in commons, by the treasurer; and such members, by the orders of the society, are bound to attend the last Friday of each term (which is called a parliament of attendance), and all absentees are subject to a forfeit of 3*s.* 4*d.* *pro non consultant*o.

The officers and servants are, a treasurer, sub-treasurer, steward, chief butler, three under butlers, upper and under cook, a panier-man, a gardener, two porters, two wash-pots, and watchmen: anciently there were four under butlers, who wore gowns, and four wash-pots, besides a turn-broach, two scullions, &c.; who all, except the porter and gardener, had their diet in the house, besides wages and other perquisites belonging to their offices.

ARMS. The arms of the Middle Temple are, argent on a plain cross, gulcs, the holy lamb, the staff or flag, argent, with a red cross.

CHURCH. The Temple church, a very beautiful specimen of the early Gothic architecture, belongs in common to the two societies: it has three aisles running east and west, and two cross aisles. The windows are lancet-shaped, very antique, and the western entrance, which answers to the nave in other churches,

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is a spacious round tower in imitation of the church of the Holy Sepulchre (a peculiarity which distinguishes all the churches of the Knight's Templars.) This is separated from the choir, not by close walls, but by a handsome screen, which however has the defect of obstructing the sight. It is supported by six pointed arches, each resting on four round pillars, bound together by a *fascia*. Above each arch is a window with a rounded top, with a gallery, and rich Saxon arches intersecting each other. On the outside of the pillars is a considerable space preserving the circular form. On the lower part of the wall are small pilasters meeting in pointed arches at top, and over each pillar a grotesque head. The choir is a large square building, evidently erected at another time. The roof is supported by slight pillars of what is usually called Suffex marble; and the windows on each side, which are three in number, are adorned with small columns of the same. On the outside is a buttress between each. The entire floor is of flags of black and white marble. The length of the choir is eighty-three feet, the breadth sixty, and the height thirty-four; it is unincumbered with galleries. The height of the inside of the tower is forty-eight feet; its diameter on the floor fifty-one; and the circumference one hundred and sixty. The pillars of this tower (six in number) are wainscotted with oak to the height of eight feet, and some have monuments placed against them, which injure the uniformity of the plan. It is singular that the small pillars, and the heads which ornament them, are not of stone, but a composition resembling coarse mortar, which is very rotten, and from neglect and damp, threatens (unless repaired) a speedy demolition. The Temple church is principally remarkable (excepting the fashion of the edifice itself, which has a very uncommon and noble aspect) for the tombs of eleven of the Knights Templars. Eight of these have the monumental effigies of armed knights; the rest are coped with grey marble. The figures consist of two groups, out of which five are cross-legged; the remainder lie straight: each group is environed by a spacious iron grate. In the first are four knights, each of them cross-legged, and three in complete mail, in plain helmets, flatted at top, and with very long shields. One of these is known to have been Geoffry de Magnaville, created earl of Essex in 1148: the other figures cannot be identified, either in this or the second group; but three of them are conjectured by Camden to commemorate William earl of Pembroke, who died in 1219, and his sons William and Gilbert, likewise earls of Pembroke and marshals of England. One of the stone coffins also, of a ridged shape, is supposed by the same antiquary to be the tomb of William Plantagenet, fifth son of Henry III. The
dress

dress and accoutrements of these knights are extremely singular; no two are alike, though all are armed in mail. Their position, likewise, is varied, and there is still sufficient expression in the faces to shew that personal resemblance was aimed at, and in some degree successfully. One figure is in a spirited attitude, drawing a broad dagger; one leg rests on the tail of a cockatrice, the other is in the action of being drawn up, with the head of the monster beneath. Another is bare-headed and bald, his legs armed, his hands mailed, his mantle long; and round his neck a cowl, as if, according to the common superstition of those days, he had desired to be buried in the dress of a monk, lest the evil spirit should take possession of his body. On his shield is a *fleur de lys*. The earl of Pembroke bears a *lion* on his shield, the arms of that great family. The helmets of all the knights are much alike, but two of them are mailed. The Temple church contains some few other ancient monuments, chiefly to the memory of eminent lawyers, as Plowden, Selden, Sir John Vaughan, &c. and one of a bishop in his episcopal dress, a mitre, and a crozier, well executed in stone. The superior clergyman of the Temple church, since the reign of Henry VIII. is called master (or *custos*) of the Temple, and is constituted by the king's letters patent, without institution or induction; there are, besides, a reader and lecturer. In Stowe's time it had four stipendiary priests, with a clerk, who had stipends allowed them out of the possessions of the dissolved monastery of St. John of Jerusalem; but the establishment was still greater in the Romish times, when the several priests had a hall and lodgings assigned them within the house. The charges of the present church are jointly paid by both societies, who have each their side at divine worship. The tone of the organ has long been remarked as the finest in the kingdom.

The inns of chancery belonging to the Inner and Middle Temple, are four.

CLIFFORD'S INN. Clifford's Inn, a member of the Inner Temple, is situated on the north side of Fleet-street, adjoining St. Dunstan's church, and is of considerable antiquity. It derives its name from the honourable family of the barons Clifford, ancestors of the earl of Cumberland, who had a residence there many ages since, which was called, according to the custom of the time, "Clifford's Inn." It was granted to Robert de Clifford, by the crown, in the third of Edward II., and the widow of Robert let it to the students of the law, at a yearly rent of 10*l.*; it afterward fell again to the crown, and again reverted to the Clifford family; but ever since the first demise by lease from Robert de Clifford's widow, which was in the 18th of Edward III., it has been held by the students of the law, having

having been afterward granted in fee-farm to Nicholas Sulyard, esq. principal of the house, and a benchler of Lincoln's Inn, in the reign of Henry VI. Nicholas Guybon, Robert Clinche, and others, the then seniors of it, in consideration of 600*l.* and the rent of 4*l.* per annum.

SOCIETY. The society was governed by a principal and twelve rulers. The gentlemen were to be in commons a fortnight in every term, or to pay about four shillings a week; they formerly had mootings. The chambers are sold for one life.

ARMS. Their armorial ensigns are, chequy *or* and *azure*, 2 fefs *gules*, within a border of the third.

HALL. The hall is in some measure built in the Gothic taste; it is about thirty feet long, and twenty-four wide, being proportionably lofty to its dimensions. To the left of the entrance is hanging up an old oak case, opening with folding doors, within which the ancient institutions of the society are preserved: they are written on vellum, and consist of forty-seven items, but, except the capital letters, which were formerly emblazoned in gold, the writing is scarcely legible; they are headed by a pen and ink drawing of the arms of England, carefully executed, as they appeared in the reign of Henry VIII. Two angels are supporters of the shield, behind whom appear on either side a lion erect, bearing in his paws a small banner, on which is drawn a single *fleur de lys*. This curious piece of antiquity is about two feet and a quarter high, by one and a quarter wide. In this hall Sir Matthew Hale and the principal judges sat, after the great fire of London, to settle the differences that occurred between landlord and tenant, and to ascertain the several divisions of property; which difficult and important business was performed by them so much to the satisfaction of the city, that the mayor and commonalty, in gratitude for so signal a service, ordered their portraits to be painted, and hung in the Guildhall, where they still remain.

LYON'S INN. Lyon's Inn is situated between Holywell-street and Wych-street, and is an appendage of the Inner Temple. It is known to be a place of considerable antiquity, from the old books of the steward's accounts, which contain entries made in the time of Henry V. How long before that period it was an inn of chancery is uncertain.

SOCIETY. Its government was formerly vested in a treasurer and twelve ancients. The gentlemen of the house were in commons three weeks in Michaelmas term, in other terms, two. They sold their chambers for one or two lives, and had mootings once in four terms.

HALL. The hall stands in the south-west corner of the court, and was formerly, when properly kept, a commodious
handsome

handsome room ; but it is now, with the rest of the inn, much neglected. The exterior is decorated with a handsome doorway, to which there is an ascent by a flight of stone steps and ballustrades : the roof terminates in a pointed pediment, in the midst of which is the armorial bearing of the society ; a lion in *alto relievo* ; indifferently sculptured.

CLEMENT'S INN. Clement's Inn appears to have derived its name from the church near which it stands, and a celebrated holy well adjoining; both which were dedicated to the Roman pontiff St. Clement. A house, or inn of chancery, for the education of students at law, was situated on this site in the time of Edward IV. To whom the inheritance anciently belonged is not known. In the year 1486, (2 Henry VII.) Sir John Cantlowe, knight, by a lease, bearing date the 20th of December, in consideration of eleven marks fine, and 4*l.* 6*s.* 8*d.* yearly rent, demised it for eighty years to William Elyot and John Elyot, (in trust, as may be presumed, for the students of the law.) About the year 1528 (20th Henry VIII.) Cantlowe's right and interest passed to William Holles, citizen of London, afterwards knight, and lord-mayor of that city, and ancestor of the dukes of Newcastle, one of whom, John earl of Clare, son and successor of Sir John Holles, the first earl, and whose residence was on the site of the present Clare-market, demised it to the then principal and fellows. The buildings of the present inn are all modern, and occupy three small courts ; through which there is a thoroughfare in the day time to Clare-market, and into New Inn.

HALL AND ARMS. The hall fills one side of the middle square or court, and is a well proportioned and elegant room. It contains a good portrait of Sir Matthew Hale, and five other pictures of no importance. On the outside, the front of which has a respectable and handsome appearance, are placed the arms of the society, argent, an anchor (without a stock) in pale proper, and a C fable passing through the middle.

In the centre of the garden, which adjoins that of New Inn, and is kept with particular neatness, is a sundial, supported by a figure of considerable merit kneeling, (a naked Moor or African,) which was brought from Italy by lord Clare, and presented to the society : it attracts much attention.

SOCIETY. St. Clement's Inn is an appendage of the Inner Temple. The society consists of a principal and twelve ancients ; the principal being removed every three years, and his place supplied by election from among the ancients. The business of the society is transacted by the steward, and there are two porters.

NEW INN. Since the destruction of Strand Inn, which was demolished

demolished by the protector Somerset to make room for his palace called Somerset-house, New Inn is the only inn of chancery remaining in the possession of the Middle Temple. It stands contiguous to Clement's Inn, on the west, and has little to interest, being built of brick and entirely modern.

The site, about 1485, was occupied as a common inn, or hoftery for travellers and others, and was called, from its sign of the Virgin Mary, "Our Lady Inn."

HALL. The hall is a high, square brick building, and stands towards the south-east corner of the square: the front is adorned with a large clock. It has nothing within side remarkable, but is a spacious and good room.

SOCIETY. The society is governed by a treasurer and twelve ancients. The members are to be in commons, in their gowns and caps, one week in every term, or pay absent commons. They had also anciently mootings once or twice a term.

ARMS. Their armorial ensigns are, *vert*, a *flower-pot* argent.

LINCOLN'S INN. This principal inn of court occupies a large plot of ground on the west side of Chancery-lane, formerly called Chancellor's-lane. Its government and rules for receiving of students, and calling them to the bar, vary in slight, but in no important particulars from those already mentioned in the Temple. Like that inn too, Lincoln's Inn had its ancient festivities, its masks, its revels, and all the strange pomp of aukward gaiety, which distinguished the learned and unpolished merry-makings of our ancestors.

Lincoln's Inn was founded partly on the ruins of the monastery of the "Blackfriars," who resided here previous to their removal to the quarter which now bears their name, and a mansion formerly belonging to Ralph Nevil, bishop of Chichester and chancellor of England in the reign of Henry III. In 1245, Richard de Wihtz, afterward called Saint Richard, became bishop of Chichester, and held the house near Holborn, as successor to bishop Neville. About that period both that mansion, and the contiguous house of the Blackfriars, which was deserted by them, became appropriated to the study of the law; but in what particular way does not appear. Tradition reports, that Henry Lacy, the great earl of Lincoln, who in the next age had a grant by patent from Edward I. of "the old friary-house near Holborn, being a person well studied in the law," assigned to the professors of it this residence; but whether by gift or purchase is not said. From this nobleman, however, it derived its name of Lincoln's Inn. Several temporary demises were afterward made of the spot in question, and additional lands granted, until the 12th of November, in the twelfth year

of Elizabeth, when Edward Sulyard, in whom the estate of inheritance had become vested, did, in consideration of 52*ol.* convey to Richard Kingsmill, and the rest of the then benchers, all the premises in fee; and a fine was levied accordingly.

GATE. Among the most striking parts of Lincoln's Inn, is the gate from Chancery-lane. This venerable structure consists of two wings or square towers, with a handsome stone arch in the centre, in the Gothic style. The building is of black or dark grey bricks, intersecting each other at right angles. Over the gateway are three circular compartments, containing in the centre the arms of England, encircled with the motto: "*Honi soit qui mal y pense.*" The arms on the dexter side, are those of Lacy, earl of Lincoln; and on the sinister, those of Sir Thomas Lovel, knight of the garter. On a label beneath, in Arabic characters, is inscribed "*Anno Dom. 1518.*" Over this entrance Oliver Cromwell is reported to have had chambers.

CHAPEL. On entering the grand arch, the venerable buildings of the hall and chapel cannot fail to strike the attention of the antiquary; although it must be confessed, they are both deficient in those elegancies and enrichments, that constitute the grandeur of the most admired Gothic structures. * The chapel is from a design of Inigo Jones: it appears from the register of the inn, that on the 22d June, in the eighth of James, it was ordered that the whole chapel, being then in a ruinous state, and not sufficiently large for the society, should be pulled down, and a new one erected in the same court. Seven years afterward, measures were taken for carrying this order into execution; a plan was formed by Inigo Jones, and the requisite sum was raised, partly by voluntary contributions, and partly by an assessment on the members of the society. This chapel has recently undergone a thorough repair, but is still defective in point of ornament. The parapet wall is very ponderous, and the necessity for raising the ground above the base of this building, has, by lowering the height of the cloyster, destroyed, in a great measure, the effect of its most beautiful part. The cloysters are regularly divided, and consist of six Gothic groined arches, which, though rather a flat curve, appear elegant; they are highly enriched with Gothic ribs, closely intersecting each other, and at these intersections are embellished with roses, shields, and various clustered decorations. The space between the bands which spring from the piers, is enriched with Gothic tracery, which adds much to the general effect. Within this cloyster was interred Thurlco, secretary of state to Oliver Cromwell.

HALL. Lincoln's Inn hall was finished in the twenty-second year of Henry VIII. The principal part of the outside is cased

with stone, particularly the coigns; the roof is sharp and cumbersome; the turrets above are of timber and covered with lead; the smaller one appears to be coeval with the more ancient parts of the building, and was, according to the register of the Inn, described; as "the loover or lanthorn set up in the sixth of Edward VI." The arms on the lead are those of Lacy, earl of Lincoln, with Quincy, and the earl of Chester. The date 1687, the period when the whole underwent a thorough repair. In the interior, the roof appears of an elliptical form, with pointed groined intersections springing from the piers, inclosing an elliptical arch over the three centre windows. At the extremities are complete Gothic arched windows, in recesses evidently as ancient as its foundation. In the front of these recesses are moulded ribs, springing from heads of the grotesque kind; in the style of architecture of the period at which it was erected. The windows are decorated with coats of arms, in stained glass, of the many dignified characters who have belonged to, and by their abilities conferred honour on, the society. Viewing the hall from the justice seat, the screen at the lower end, which was added in the sixth of Elizabeth, has every characteristic feature of the buildings of that period; and, except its eccentric decorations and massiveness, it has not any thing striking to arrest attention. Over the justice seat, where the lord chancellor sits in vacation, is a picture by Hogarth, more celebrated than admired, representing Paul before Felix; as the forte of this truly great painter was the comic style, this serious attempt has been most severely criticised, and on the whole more censured than it deserves; though no one will attempt to prove that it is entitled to the highest praise.

LIBRARY. The library, which is situated in the stone buildings, contains, besides a good collection of books, many very fine and curious manuscripts. These were removed in 1787 from the old library to the present, which is a handsome, spacious, and commodious apartment, being made out of the three sets of chambers. The manuscripts are in close presses at one end of the library, where fires are daily kept in winter.

The building is very substantial, with stone staircases, and solid party walls. The keys of the presses are kept by the master of the library, who is chosen annually by the benchers from their own body, and the manuscripts cannot be viewed without a special order from one or two of the masters of the bench. The first formation of the library was in the time of Henry VII.; and in the early part of the reign of Elizabeth, the building was erected; but the books accumulated so slowly, that, in the sixth of James I., a tax was laid on the benchers and barristers for the purpose of augmenting it. The greater part of

the valuable manuscripts was bequeathed by Sir Matthew Hale, and they have been accurately classed and explained in the return made to the select committee for examining into the public records. The collection is very large and valuable, and continually augmenting.

The old buildings in this inn have a venerable appearance; while the new square and stone buildings are models of elegance and convenience. The garden is handsomely laid out, and commands from its terrace a view of Lincoln's Inn Fields; the largest, and, for building and plantation, among the finest of the squares in the metropolis.

To Lincoln's Inn belong two inns of chancery, of which one is no longer effectually, though still nominally to be considered as an inn.

THAVIE'S INN. This place is at least as old as the time of Edward III. It took its name from one John Thave, or 'Tavie, whose house it then was, and who directed, that after the decease of his wife Alice, his estates, and the *hostel* in which apprentices to the law were used to inhabit, should be sold, in order to maintain a chaplain, who was to pray for his soul and that of his spouse. In the reign of Edward VI. Gregory Nichols, citizen and mercer of London, being possessed by inheritance of the property of this mansion, granted it to the benchers of Lincoln's Inn for the use of students; which society soon afterwards constituted it one of their inns of chancery, and vested the government in a principal and fellows, who were to pay as an acknowledgment to the mother house the annual rent of 3*l.* 6*s.* 4*d.* By the ancient orders of this society the members of Thavie's Inn were to be ten days in commons in issuable terms, and in the rest of the terms a week, and were allowed the same privileges for the admission of students into Lincoln's Inn, as were enjoyed by the members of Furnival's Inn. But this inn having been burnt down, is now converted into a private court, composed of ordinary dwelling houses, not divided into chambers, but enclosed, and separated from the street by an iron gate.

ARMS. The arms are. azure, two garbs or, bands guêlfe; on a chief sable a letter, T argent.

FURNIVAL'S INN. This inn of chancery is situated in Holborn, between Brook-street and Leather-lane: it occupies a considerable plot of ground, and is divided into two squares or courts. The first towards Holborn, is of a good width, but shallow, and built round on the four sides. The second or inner court extends the depth of great part of Brook-street, and has chambers on one side only: the buildings of both are in a state of decay, and appear to be much neglected. It is

first noticed as a law seminary in its steward's account book, written about the ninth of Henry IV. and derives its name from its original occupants, the lords Furnival. This noble family was extinct in the male line in 6 Richard II.; some time before which period this inn was demised to the students of the law; but the precise date of its establishment as a school of legal education is involved in obscurity. In the first of Edward VI. Francis earl of Shrewsbury sold it to Edward Gryffin, esq. then solicitor-general to the king, William Ropcre, and Richard Heydone, esqrs. and their heirs, to the use of the society of Lincoln's Inn, for 120*l.* which sum was paid out of the treasury of that society. The principal and fellows of Furnival's Inn, to whom a lease was granted by the society of Lincoln's Inn, were to pay yearly 3*l.* 6*s.* 4*d.* and were allowed several privileges. The street front is an uncommonly fine specimen of brick-work, being adorned with pilasters, mouldings, and various other ornaments, and extends a considerable length. It contains a range of good chambers, and beneath, a handsome arched gateway leading to the interior parts of the Inn. It appears to have been erected about the time of Charles II. No other part of the inn deserves much notice.

SOCIETY. The society is governed by a principal and twelve ancients.

ARMS. Their arms are, argent, a bend, between six martlets gules, within a border of the second.

GRAY'S INN. The society in this, as well as in the other three inns of court, has the power of calling to the bar, and exercises it in the same manner. It may here be fit to observe a difference which prevails in these inns with respect to the admission of members. In the Middle Temple, and in Lincoln's Inn, no attorney or solicitor can be a member; but if any one previously admitted, embraces that branch of the profession, he is discharged from the society. In the Inner Temple and Gray's Inn, on the contrary, attorneys are members, and may eat in commons with the students, but cannot be benchers, they being invariably chosen from among the barristers.

Gray's Inn is situated on the north side of Holborn, nearly opposite the end of Chancery-lane, from which it extends, but enveloped by houses, to Gray's-inn-lane, a considerable distance eastward.

It derives its name from the lords Gray of Wilton, whose residence it originally was. The premises became the property of the prior and convent of Shene, by whom they were demised to the students of the law for the annual rent of 6*l.* 13*s.* 4*d.* at which rent they were held of that monastery till the dissolution,

tion, when becoming the property of the crown, a grant was made by the king in fee farm, and the property still continues vested in the crown. The orders for learning and government are in this society very similar to those of the other inns. It has a minister, a reader, a steward, four butlers, two cooks, and other inferiors, making seventy persons in all.

ARMS. Gray's Inn anciently bore arms derived from those of lord Gray of Wilton; but in more modern times, they assumed azure, an Indian griffin proper segreant, with the laudable inscription environing the same.

The ancient buildings of Gray's inn are spoken of by a contemporary writer as possessing very little beauty or uniformity, being erected by different persons; and the structure of the more ancient not only very mean, but of so slender capacity, says he, that even the ancients of the house were necessitated to lodge double. They are now however much improved, and the great court, called Gray's inn square, is composed of elegant and commodious chambers.

HALL. The hall has no claim to attention except its antiquity. From its cumbrous roof, contracted windows, and general massiveness of design, it presents, in every part, a heavy and gloomy appearance; nor is there reason to change this opinion, on a survey of the interior. The roof is of oak, and is divided into six bays or compartments, by seven arched and moulded Gothic ribs, or principals. The spandles or spaces are divided by upright timbers, with a horizontal cornice in the centre. At the extremity of the projecting spandles, is a carved pendent ornament, in some degree partaking of the nature of an entablature. The east and west windows, like those on the side, are too low for their width; some specimens of coats of arms are still remaining in them. The screen of the hall is supported by six pillars, of the Tuscan order, with cariatides supporting the cornice. The roof has a solemn grandeur, which, in some degree, rescues the whole building from obscurity. It was erected in the reign of Philip and Mary, and every fellow of the house, having chambers, was assessed towards the expence.

CHAPEL. The chapel has, within a few years, been newly cased with stone; and, except the Gothic windows, completely modernized. The inside is on a very narrow scale, and can boast of no embellishment. The altar consists of four Doric columns, and surmounted with a scroll pediment, in the centre of which are singularly resplendent radii, issuing from a dove.

GARDENS. The gardens are spacious and commodious;
and

and the public, from the free use of them, have derived great pleasure and advantage. The first mention made of them is in the fortieth of Elizabeth; when Mr. Bacon, afterwards Sir Francis Bacon lord Verulam, was allowed the sum 7*l.* 15*s.* 4*d.* for planting elm trees; and it was ordered that a new rail and quick-set ledges should be set on the upper long walk, at the discretion of the same Mr. Bacon and Mr. Wilbraham, which amounted to 60*l.* 6*s.* 8*d.* On this terrace, Mr. Bacon likewise erected a summer house, on a small mount; but as Hamstead and Highgate are no longer visible from this spot, the society have very judiciously taken down the prospect house.

There are two inns of chancery belonging to Gray's Inn.

STAPLE INN. Staple Inn stands on the south side of Holborn, nearly opposite Gray's-inn-lane. It consists of two large courts surrounded with buildings. Great part of the second court was rebuilt in the early part of the eighteenth century, and contains a small garden, pleasantly laid out. The first court adjoining Holborn, and particularly the street front, is of a much greater age; it was probably erected about the time of queen Elizabeth, but possibly much earlier. The inn derives its name, according to tradition, from the merchants who dealt in wool, having had their meetings in it, when it was called Staple Hall.

HALL. The hall, though not large, is well proportioned. The roof is supported by five principal beams, framed with Gothic ribs of oak, and enriched with grotesque ornaments; and the ends of the posts are carved and moulded with drops, in the same style. On the lower short beams of the spandrels of the roof are placed upright ornaments of a grotesque and zig-zag character, differing from any even of the most unmeaning decorations of the most tasteless period. A modern plaster ceiling and cornice appear to have been added on the under side of the rafters; which, it may be presumed, were originally of oak and open to the view. The windows are decorated with stained glass, containing the royal arms, those of some of the judges of the king's bench, the principals of the inn, and others of eminence in the profession. There are also some pictures, and casts of the twelve Cæsars.

SOCIETY. Staple Inn is under the direction of thirteen ancients, which include a principal and pensioner; the first is elected every three years by the junior members, the other holds his office at his own discretion.

ARMS. The armorial bearings of this inn is vert, a wool-pack, argent.

BERNARD'S INN. Bernard's Inn is situated at a small distance from Staple Inn, in the same street, consisting also of two courts surrounded by handsome and convenient chambers, but inferior in size. Bernard's Inn was anciently called Mackworth Inn:

it has been styled the second inn of chancery. The time when it began to be inhabited by professors of the law is uncertain, but it undoubtedly was so in the 32d Hen. VI.

HALL. The hall, which is a very small room, contains a few portraits of eminent law characters, and two busts. The windows are likewise decorated with armorial bearings.

SOCIETY AND ARMS. The government of this inn is vested in a principal and twelve ancients. The armorial ensigns are, party per pale, indented ermin and sable, a chevron frettee or and gules.

COUNSEL. Having thus described the inns at which students are called to the bar, with their appendages; it becomes necessary to notice the office and rank of counsel. Of advocates, or (as they are generally called) counsel, there are two species or degrees; barristers and serjeants. The former are in old books styled apprentices, *apprenticii ad legem*, being looked upon as merely learners, and not qualified to execute the full office of an advocate till they were of sixteen years standing; at which time they might be called to the estate and degree of serjeants, or *servientes ad legem*. From both these degrees some are usually selected to be his majesty's counsel learned in the law; the two principal of whom are called his attorney, and solicitor-general. The first *king's counsel*, under the degree of serjeant, was Sir Francis Bacon, who was made so *honoris causa*, without either patent or fee; so that the first of the modern order (who are now the sworn servants of the crown, with a small standing salary,) seems to have been, Sir Francis North, afterwards lord-keeper of the great seal to Charles II. These king's counsel answer in some measure to the advocates of the revenue, *advocati fisci*, among the Romans; for like them they must not be employed in any cause against the crown, without special licence*; but in the imperial law, except some peculiar causes, the fiscal advocates were not permitted to be at all engaged in private suits. A custom has of late years prevailed of granting letters *patent of precedence* to such barristers, as the crown thinks proper so to honour; whereby they are entitled to the rank and pre-audience assigned in their respective patents: sometimes next after the attorney-general, but usually next after the king's counsel then being. The holders of these patents, as well as the queen's attorney and solicitor general, rank promiscuously with the king's counsel, and together with them sit within the bar of their respective courts; but as they receive no salaries,

* Hence none of the king's counsel can publicly plead in court for a prisoner, or a defendant in a criminal prosecution, without a licence, which is rarely refused; but an expence of about 9*l.* must be incurred in obtaining it.

and are not sworn, they are at liberty to be retained in causes against the crown. All other serjeants and barristers indiscriminately (except in the court of common pleas, where only serjeants are admitted) may take upon them the protection and defence of any suitors, whether plaintiff or defendant: who are therefore called their *clients*, like the dependants on the ancient Roman orators. Those indeed practised *gratis*, for honour merely, or at most for the sake of gaining influence: and so likewise it is established in the courts in England, that counsel can maintain no action for his fees; which are merely honorary, and not given as salary or hire. In order to encourage due freedom of speech in the lawful defence of their clients, and, at the same time, to give a check to unseemly licentiousness, it has been holden that a counsel is not answerable for any matter by him spoken, relative to the cause in hand, and suggested in his client's instructions; although it should reflect upon the reputation of another, and even prove absolutely groundless: but if he mentions an untruth of his own invention, or even upon instructions if it be impertinent to the cause in hand, he is then liable to an action from the party injured. And counsel guilty of deceit or collusion are punishable by the statute Westm. 1. 3 Edw. I. c. 28. with imprisonment for a year and a day, and perpetual silence in the courts. The latter part of the punishment, or more properly an entire exclusion from the bar, is still sometimes inflicted for gross misdemeanors in practice.

SERJEANTS Serjeants at law, called in Latin "*narratores*," and in French "*countors*," are of very great antiquity, and by some authors the dignity is asserted to be prior to the conquest. They are expressly mentioned in a statute of Edward I.; in the reign of Edward III. they were summoned to parliament, and sat with the justices of both benches. They were specially exempted from serving on trials of grand assize, except where there were no knights in the county, an evidence that, they were esteemed of an equal rank; and they precede, says Sir Edward Coke, "those who sit on an high bench in Westminster Hall" (meaning the masters in chancery.) In former times they were created with great pomp and solemnity, accompanied with many ceremonies, tedious, ridiculous, and expensive. Even in modern times, the practice of proclaiming the appearance of a new serjeant in the court of common pleas by an exclamation from the chief justice, "I spy a brother," and a childish conversation in consequence, is said to have been retained; and the distribution of gold rings to all friends of the advocate, was continued till about the year 1790. At present a serjeant is created as formerly, by writ; and cannot receive that
dignity

dignity till he has been a barrister five years ; they are bound by a solemn oath to do their duty to their clients ; and by custom the judges of the courts at Westminster are always admitted into this venerable order, before they are advanced to the bench, the original of which was probably to qualify the *puisne* barons of the exchequer to become justices of assize according to the exigence of the statute of 14 Edw. III. c. 16. Serjeants could formerly only be created in term time ; but on a recent occasion, some inconvenience having arisen from the death of a chief justice, whose place it was necessary immediately to supply, a statute passed, enabling the king at any time to call any barrister duly qualified to the degree of serjeant at law. In court, the judge being himself a serjeant, always addresses those of that rank by the title of brother, and they use the same style in speaking to each other. Serjeants alone can practise in the court of common pleas ; but at the sittings at nisi prius, barristers may be employed.

PRECEDENCE. Pre-audience in the courts is reckoned of so much consequence, that it may not be amiss to subjoin a small table of the precedence which usually obtains among the practitioners. 1. The king's premier serjeant, (so constituted by special patent.) 2. The king's ancient serjeant, or the eldest among the king's serjeants. 3. The king's advocate general. 4. The king's attorney general. 5. The king's solicitor general. 6. The king's serjeants. 7. The king's counsel, with the queen's attorney and solicitor. 8. Serjeants at law. 9. The recorder of London. 10. Advocates of the civil law. 11. Barristers. In the court of exchequer two of the most experienced barristers, called the *post-man* and the *tax-man*, (from the places in which they sit) have also a precedence in motions.

SERJEANTS' INNS. Besides the Inns of court and chancery, there have been from very remote antiquity other inns appropriated to the use of the judges of the king's bench, common pleas, barons of the exchequer, and serjeants at law. Two of these are still remaining, the one situate in Chancery-lane, the other in Fleet-street. A third stood in Holborn, called Serpents Inn, but it has been long destroyed.

SERJEANTS' INN, CHANCERY-LANE. This Inn consists of two small courts, surrounded by the judges' chambers, which are spacious rooms. The principal entrance is from Chancery-lane, and fronts the hall : the second court communicates with Clifford's Inn, by means of a small passage. The buildings are modern, and the work of the last century : the only parts of them that merit notice are, the hall and the chapel. The ascent to the hall is by a handsome flight of stone steps and ballustrade. It is built of brick, with stone cornices, and ornamented in front with

with a handsome pediment surmounted by a turret and clock. The inside is not large, but forms a well proportioned apartment; and the windows, like those of most of the other halls, are decorated with armorial bearings in stained glass. The chapel is a small neat edifice, with seats for the judges, but is no ways remarkable. This inn did not attain its present appellation of "Serjeant's Inn" till about the year 1484; previous to which it was called "Farringdon's Inn, in Chancellor's-lane;" and still earlier it was recognized as the tenement of John Skarle. In this inn the serjeants at law have a right to chambers as they become vacant; but their number is much greater than can be accommodated in so small a precinct. The judges do not reside in their chambers, but have clerks there, and attend themselves at proper times to transact business.

SERJEANTS' INN, FLEET STREET. This Inn retains its ancient name, but is at present little more than a mere private court, having been deserted by the judges on the buildings of the old inn falling to decay. It adjoins the north-east corner of the Temple, with which it has a communication by means of a narrow passage; but the principal entrance is from Fleet-street, where there are handsome iron gates, and was formerly a lodge where a porter was kept. The ancient inn having been burnt down in the fire of London; on the lease being renewed by the dean and chapter in 1670, the whole was rebuilt by a voluntary subscription of the serjeants; which subscription was to be repaid by a particular mode agreed on among themselves. The chapel, hall, and kitchen were erected with the overplus of a sum of money, deposited by seventeen new created serjeants, after deducting about 400*l.* for their feast. The whole inn has been again rebuilt, within these few years; and on the site of the ancient hall, (which was long used as a chapel,) the Amicable Society have lately erected an elegant building for the transaction of their business, which is a great ornament to the place. The arms of these two inns of judges and serjeants are appropriate; and described by heavenly bodies: 1. Mars, two galbes in saltire solis, bands jovis; 2. an ibis proper.

JUDGES. In treating on the superior courts of king's bench, common pleas, and exchequer, the judges who preside in them have occasionally been mentioned, but a few particulars remain to be noticed. The king himself, though intrusted with the whole executive power of the law, cannot sit in judgment in any court, but his justice and the laws must be administered according to the power committed to, and distributed among, his several courts of justice. In this distinct and separate existence of the judicial power, in a peculiar body of men, nominated in-

deed,

deed, but not removeable at pleasure, by the crown, consists one great preservative of the public liberty, which cannot subsist long in any state, unless the administration of common justice be, in some degree, separated both from the legislative and executive power. For this reason, the statute of 16 Chas. I. c. 10. which abolished the court of star-chamber, removes all judicial power out of the hands of the king's privy council, who might be inclined to pronounce that for law which was most agreeable to the prince or his officers. It is also of the greatest importance to the law of England, and to the subject, that the power of the judge and jury should be kept distinct; that the judge should determine the law, and the jury the fact; nor can their office be confounded, without the confusion of law and destruction of justice. All judges must derive their authority from the crown, by some commission warranted by law: the judges at Westminster are all (except the chief justice of the king's bench, who is created by writ) appointed by patent, and formerly held their places only during the king's pleasure; but for the greater security of the liberty of the subject, the 12 and 13 W. III. c. 2. provided that their commissions should be in force during their good behaviour, nor could they be displaced but on the address of both houses of parliament. Still however their commissions become void in six months after the demise of the crown; but by statute 1 Geo. III. c. 23, enacted at the earnest recommendation of the king himself from the throne, the judges are continued in their offices during their good behaviour, and their full salaries are secured to them during the continuance of their commissions; his majesty having on that occasion patriotically declared, that "he looked upon the independence and uprightness of the judges, as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honour of the crown." The judges are bound by oath to determine according to the known laws, and ancient customs of the realm; and their rule herein must be the judicial decisions and resolutions of other judges, and not their own arbitrary will and pleasure, or that of their prince. But although they are bound to judge by these rules and customs, they are freed from all prosecutions for any thing done in court arising from an error in judgment. Nor is a judge, constituted by the king, and thereby stamped with his approbation, and to whom alone it belongs to judge of his fitness, to be reflected on, censured, defamed, or vilified with respect to his ability, parts, fitness for his place, or in any other manner; for, if this were allowed, it would be impossible to preserve in the people

The salaries of the judges are: the chief justice of the king's bench, 5,500*l.*; the chief justice of the common pleas, and chief baron of the exchequer, 5,000*l.* each; and each of the puisne judges and barons, 4,000*l.* After filling their stations fifteen years they may retire, and in that case, the king may grant pensions to the chief justice of the king's bench of 3,800*l.*; to the chief justice of the common pleas, and chief baron of the exchequer 3,300*l.* each, and to the other judges and barons 2,600*l.* each.

OTHER COURTS. Those already described are the principal courts for the trial of questions where the chief effect is compensation for injury, or restoration of right ; the tribunals which take cognizance of criminal matters alone will be subsequently considered. The court of parliament has already been treated of at large in the first volume, where it occupies a distinct section; the court of chivalry is also noticed in the same volume, page 492. ; and at pages 178. and 179., as much mention as is necessary is made of the court of the steward of the king's household, and the court, or board of green cloth. Various courts have been abolished as useless or oppressive ; such are the courts of augmentations, first-fruits and tenths, now no longer necessary ; and the courts of *high commission* and *star chamber*, which by their tyrannical proceedings disgraced and incensed the country. This latter court was of very ancient origin, but as new modelled by stat. 3 Hen. VII. c. 1., and 21 Hen. VIII. c. 20., consisted of divers lords spiritual and temporal, being privy counsellors, together with two judges of the courts of common law, without the intervention of any jury. Their jurisdiction extended legally over riots, perjury, misbehaviour of sheriffs, and other notorious misdemeanors. Yet this was afterwards (as Lord Clarendon informs us) stretched " to the asserting of all proclamations and orders of state ; to " the vindicating of illegal commissions and grants of monopolies ; holding for honourable that which pleased, and for " just that which profited, and becoming both a court of law " to determine civil rights, and a court of revenue to enrich " the treasury : the council table by proclamations enjoining to " the people that which was not enjoined by the laws, and " prohibiting that which was not prohibited ; and the star-chamber, which consisted of the same persons in different " rooms, censuring the breach and disobedience to those pro-

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“clamations by very great fines, imprisonments, and corporal severities : so that any disrespect to any acts of state, or to the persons of statesmen, was in no time more penal, and the foundations of right never more in danger to be destroyed.” For these reasons it was abolished by 16 Chas. I. c. 10. to the general joy of the nation. From the just odium into which this tribunal had fallen before its dissolution, few memorials have reached us of its nature, jurisdiction, and practice ; except such as, on account of its enormous oppression, are recorded in the histories of the times. There are however to be met with some reports of its proceedings in Dyer, Croke, Coke, and other reporters of that age, and some in manuscript ; and there is in the British Museum (Harl. MSS. Vol. I. No. 1226.) a very full, methodical, and accurate account of the constitution and course of this court, compiled by William Hudson of Gray’s Inn, an eminent practitioner in it. This account has been published in the second volume of *Collectanea Juridica*. A short account of the same court with copies of all its process may also be found in 18 Rymer’s *Fœdera* 192. In the second volume of a collection of curious discourses by eminent antiquaries, published by Thomas Hearne, there is a paper by Mr. Tate, entitled *Camera Stellata*, or an explanation of the most famous court of Star Chamber, together with an account of the offences there punishable, the fees payable, and the orders for proceeding therein, which not only describes and explains, but vindicates and extols the principles and practice of this justly unpopular tribunal.

WESTMINSTER HALL. The superior courts are held in Westminster Hall. The royal palace at Westminster was built by Edward the Confessor, and many parts of the original structure still exist, though sunk into other uses. Succeeding monarchs added much to it. The great hall was built by William Rufus, or possibly rebuilt, as a great hall was always deemed a necessary appendage to a palace. The entrance from New Palace-yard was bounded on each side by towers, magnificently ornamented with numbers of statues in rows above each other, many of which are now lost : A mutilated figure of an armed man, supposed to have been one of these statues, was discovered under the exchequer stair-case in 1781. In this hall and contiguous rooms, Henry III. entertained six thousand poor men, women, and children, on new year’s day, 1236. It became ruinous before the reign of Richard II. who rebuilt it in its present form in 1397 ; and in 1399 kept his Christmas in it with his characteristic magnificence. The cognizance of this unfortunate monarch, a white hart couchant under a tree, is still to be seen rudely carved in stone, as one of the ornaments surrounding the hall. Twenty-eight
oxen,

oxen, three hundred sheep, and fowls without number, were daily consumed. His daily guests were ten thousand. This room exceeds in dimension any in Europe which is not supported by pillars; its length is two hundred and seventy feet; the breadth seventy-four. Its height adds to its solemnity. The roof consists chiefly of chefnut wood, most curiously constructed, and of a fine species of Gothic. It is supported by thirteen Gothic ribs, of a noble dimension, springing from the centre of each pier. It is in many places adorned with angels, supporting the arms of Richard II. and of Edward the Confessor. The stone moulding that runs round the hall, has likewise in many parts the device of Richard II.; the hart couchant under a tree. The whole roof, and the more ancient parts of the hall, are in the highest state of preservation. The sky-lights and dormer-windows in the roof, are evidently modern additions, and rather interfere with the general simplicity; but the lights produced from them afford a brilliant variety of tints, diffusing themselves over the richly ornamented roof. At the upper end of the hall stand the courts of chancery and king's bench, to which there is an ascent by an easy flight of steps. They are modern buildings, erected, it is said, about the middle of the eighteenth century. On this spot Stowe tells us, "there was anciently a marble stone, of twelve feet in length, and three in breadth; and also a marble chair, where the kings of England formerly sat at their dinners; and at other solemn times, the lord chancellor. At this marble stone divers matters of consequence used to be transacted." The courts are ornamented with six whole length figures, finely decorated, most probably the effigies of some of our ancient kings, which formerly made a termination to the hall. On the north side of the hall is the court of common pleas; and at the right hand from the great entrance is a detached chamber for the court of exchequer.

Within the same building and communicating with Westminster-hall, are the houses of lords and commons, with their principal offices. Beside these, there is the *court of requests*, a vast room modernized; at present a mere walking place. The outside of the south end shews the great antiquity of the building, having in it two great round arches, with zig-zag mouldings, the most ancient species of English architecture. The room in which the tremendous court of *star chamber* was held still remains, retaining its original name, but is no longer distinguished by stars painted on the roof, from which it is erroneously supposed the court derived its title. The room now called the *painted chamber* is used as the place of conference between the lords and commons. It makes a very poor appearance, being hung with

with very ancient French or Arras tapestry, which, by the names worked over the figures, seems to relate to the Trojan war. The windows are of the ancient simple Gothic. On the north outside, beyond the windows, are many marks of recesses, groins, and arms, on the remains of some other room. Numbers of the other great apartments are still preserved on each side of the entrance into Westminster-hall, in the law court of exchequer, and adjacent, and the same in the money exchequer, and the court of the duchy of Lancaster; all which were parts of the ancient palace. At the foot of the stair-case is a round pillar, having on it the arms of John Stafford, lord treasurer from 1422 to 1424. On the opposite part are the arms of Ralph, Lord Botelar, of Sudley, treasurer of the exchequer in 1433.

COURTS OF ASSIZE AND NISI PRIUS. Besides the regular administration of justice in the superior courts at Westminster, other courts are established for the trial of causes in every county in England, and they act as collateral auxiliaries to the courts at Westminster. From these, as has been observed, process issues at the suit of every person who is disposed to bring an action; but for the purpose of trying within the county where the interest arises, all the facts by which the dispute is to be determined, courts of assize, and nisi prius are established.

These are composed of two or more commissioners, who are twice in every year sent by the king's special commission all round the kingdom, except London and Middlesex, to try by juries of the respective counties the truth of such matters of fact as are then under dispute in the courts at Westminster. The courts of nisi prius in London and Middlesex are holden by the chief justices of the common law courts in and after every term; they are called sittings. Those for Middlesex were established by the legislature in the reign of Elizabeth. In ancient times all issues in actions brought in that county were tried at Westminster in the terms, at the bar of the court in which the action was instituted; but when the business of the courts increased, these trials were found so great an inconvenience, that it was enacted by 18 Eliz. c. 12. that the chief justice of the king's bench should be empowered to try within the term, or within four days after the end of it, all the issues joined in the courts of chancery and king's bench; and that the chief justice of the common pleas and the chief baron should try in like manner the issues joined in their respective courts. In the absence of any one of the chiefs, the same authority was given to two of the judges or barons of his court. The statute 12 Geo. I. c. 31. extended the time to eight days after term, and empowered one judge or baron to sit in the absence

sence of the chief; and the 24 Geo. II. c. 18. has extended the time after term to fourteen days.

The judges of assize came into use in the room of the ancient justices in Eyre, who made their circuit round the kingdom once in seven years, for the purpose of trying causes; but the present justices of assize and *nisi prius* are more immediately derived from the statute Westm. 2. 13 Edw. I. c. 30. which directs them to be assigned out of the king's sworn justices, associating to themselves one or two discreet knights of each county. By statute 27 Edw. I. c. 4. (explained by 12 Edw. II. c. 3.) assizes and inquests were allowed to be taken before any one justice of the court in which the plea was brought, associating to him one knight or other approved man of the county. And, lastly, by statute 14 Edw. III. c. 16. inquests of *nisi prius* may be taken before any justice of either bench (though the plea be not depending in his own court) or before the chief baron of the exchequer, if he be a man of the law; or otherwise before the justices of assize, so that one of each justices be a judge of the king's bench or common pleas, or the king's serjeant sworn.

CIRCUITS. The judges usually make their circuits in the vacations after Hilary and Trinity terms. The jealousy of our ancestors ordained, that no man of law should be judge of assize in his own county, wherein he was born or inhabited, and this restriction was construed to extend to every commission of the judges; but it being found very inconvenient, the 12 Geo. II. c. 27. was enacted for the express purpose of authorizing the commissioners of *oyer and terminer*, and gaol delivery, to execute their commissions in the criminal courts within the counties in which they were born, or in which they reside. The judges upon their circuits now sit by virtue of five several authorities. 1. The commission of the peace. 2. A commission of *oyer and terminer*. 3. A commission of general gaol delivery. 4. A commission of assize directed to the justices and serjeants therein named, to take (together with their associates) assizes in the several counties; that is, to take the verdict of a peculiar species of jury, called an assize, and summoned for the trial of landed disputes. 5. That of *nisi prius*, which is a consequence of the commission of assize, being annexed to the office of those justices by the statute of Westm. 2. 13 Edw. I. c. 30. and it empowers them to try all questions of fact, issuing out of the courts at Westminster, that are then ripe for trial by jury. These by the course of the courts are usually appointed to be tried at Westminster in some Easter or Michaelmas term, by a jury returned from the county wherein the cause of action arises; but with this proviso, *nisi prius*,
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unless before the day prefixed, the judges of assize come into the county in question. This they are sure to do in the vacation preceding each Easter and Michaelmas term, which saves much expense and trouble. These commissions are constantly accompanied by writs of *association*, in pursuance of the statutes of Edward I. and II. before mentioned; whereby certain persons (usually the clerk of assize and his subordinate officers) are directed to associate themselves with the justices and serjeants, and they are required to admit the said persons into their society, in order to take the assize, &c. that a sufficient supply of commissioners may never be wanting. But, to prevent the delay of justice by the absence of any of them, there is also issued of course a writ of *si non omnes*, directing, that if all cannot be present, any two of them (a justice or serjeant being one) may proceed to execute the commission.

These general circuits are six, comprising the whole kingdom of England, except those places which have already been mentioned as being entitled to separate jurisdictions. They severally comprise the following counties; and the assizes are held at the towns mentioned after their names. 1st. The *Home Circuit*, including *Hertfordshire*, the county town Hertford; *Essex*, Chelmsford; *Surry*, Kingston, in the spring, and in the summer, Guildford and Croydon alternately; *Suffex*, East Grinstead, in the spring, and in the summer, Horsham and Lewes alternately; and *Kent*, where the assizes are always at Maidstone. 2d. The *Midland Circuit*, in which are *Northamptonshire*, Northampton; *Rutlandshire*, Oakham; *Lincolnshire*, Lincoln; *Nottinghamshire*, Nottingham; *Derbyshire*, Derby; *Leicestershire*, Leicester; and *Warwickshire*, Coventry and Warwick. 3d. The *Norfolk Circuit*, comprising *Buckinghamshire*, Buckingham; *Bedfordshire*, Bedford; *Suffolk*, Bury St. Edmunds; *Huntingdonshire*, Huntingdon; *Cambridgeshire*, Cambridge; and *Norfolk*, Norwich. 4th. The *Oxford Circuit*, containing *Berkshire*, Reading; *Oxfordshire*, Oxford; *Herefordshire*, Hereford; *Shropshire*, Shrewsbury; *Gloucestershire*, Gloucester; *Monmouthshire*, Monmouth; *Staffordshire*, Stafford; and *Worcestershire*, Worcester. 5th. The *Northern Circuit*, having *Yorkshire*, York; *Durham*, Durham; *Northumberland*, Newcastle; *Cumberland*, Carlisle; *Westmoreland*, Appleby; and *Lancashire*, Lancaster. Durham, Northumberland, Cumberland and Westmoreland have assizes in the summer only, on account of the badness of the ways. The summer northern circuit is therefore called the long circuit, and the judges in travelling to its extremity and back to London, make a journey of 652 miles. 6th. The *Western Circuit*, in which are *Southampton*, Winchester; *Wiltshire*, Salisbury; *Cornwall*, Bodmin; *Devonshire*, Exeter; *Somersetshire*, Taunton, in spring, and
Wells

Wells and Bridgewater alternately, in summer; and an assize for the city and county of Bristol in summer only.

These circuits are supplied by the twelve judges, two being appointed to each. For which purpose, and to prevent any contention about choice, they all meet every Hilary and Trinity term at Serjeants' Inn, and the lord chief justice of the king's bench makes his election first; the chief justice of the common pleas chooses next; and he is followed by the lord chief baron of exchequer. Then the other judges choose according to seniority. After this choice amongst themselves, they wait on the king, who, at his pleasure, either confirms or alters their arrangement. In every Trinity term, the king also grants a warrant to the bishop of Durham, to issue commissions to the judges appointed to the circuit which includes that county, in the same manner as he gives his warrant to his judges for other counties, and in virtue of which their several commissions are issued. The senior or superior judge generally sits on the crown side, or for the trial of criminals, and the junior or inferior, on the nisi prius side, for the decision of cases of property.

Each circuit is attended by counsel; and it is a rule at the bar, that they who have elected one circuit do not, even if they have leisure, practise at another, unless on account of their great talents or reputation, they are brought there by a special retainer; and in that case, they plead only in the very causes wherein they are specially retained.

The officers belonging to the circuits are, the *clerk of the assize*, *associate*, *clerk of arraigns*, *clerk of indictments*, *judge's marshal*, *crier*, *clerk*, and *tipstaff*. The sheriff of each county, and his deputy attend the judges, and the coroner also attends to deliver in all inquisitions, &c. to the clerk of assize in court, and he is to return all writs of *venire*, *distringas*, and *habeas corpora*, where the sheriff is a party in the suit, which are specially directed to him for that purpose.

OF TYTHINGS, HUNDREDS, AND COUNTIES. It has already been said at the beginning of this work, that the division of England into counties, and the further subdivisions of the land which have contributed so much to facilitate justice and preserve order, are generally ascribed to Alfred the Great. That prince, to prevent the rapines and disorders which prevailed in the realm, instituted tythings; so called from the Saxon, because ten freeholders, with their families, composed one. These all dwelt together, and were sureties, or free pledges to the king, for the good behaviour of each other; and if any offence was committed in their district, they were bound to have the offender forthcoming.

forthcoming. And therefore anciently no man was suffered to abide in England above forty days, unless he were enrolled in some tything or decennary. One of the principal inhabitants of the tything is annually appointed to preside over the rest, being called the tythingman, the headborough, and in some counties the tithingman, or boroughs-healder, being supposed the discreetest man in the borough, town, or tything. Tythings, towns, or vills, are of the same signification in law, and are said to have had each of them originally a church, and celebration of divine service, sacraments, and burials. As ten families of freeholders made up a town or tything, so ten tythings composed a superior division, called a hundred, as consisting of ten times ten families. The hundred is governed by a high constable or bailiff; and formerly there was regularly held in it the hundred court for the trial of causes, though now fallen into disuse. In some of the northern counties these hundreds are called wapentakes. An indefinite number of these hundreds makes up a county or shire. In some counties there is an intermediate division, between the shires and the hundreds, as lathes in Kent, and rapes in Sussex, each of them containing about three or four hundreds. These had formerly their lathe reeves and rape reeves, acting in subordination to the shire reeve. Where a county is divided into three of those intermediate jurisdictions, they are called tythings, which were formerly governed by a tything reeve. These tythings still subsist in the county of York, where, by an easy corruption, they are denominated ridings.

SHERIFFS. It seems that anciently the government of the county was by the king lodged in the earl or count, who was the immediate officer of the crown; and this high office was granted by the king at will, sometimes for life, and afterwards in fee. But, when it became too burdensome, and could not be commodiously executed by a person of so high rank and quality, it was thought necessary to constitute a person duly qualified to officiate in his stead, who hence is called in Latin *vicecomes*, and in English, sheriff, from *shire-reeve*, i. e. governor of the shire or county. He is likewise considered as bailiff to the crown; and his county, of which he has the care, and in which he is to execute the king's writs, is called the bailiwick. Although the sheriff is still called *vicecomes*, yet in all he does, all his authority is derived immediately, not from the earl, but from the king, who by his letters patent commits to him the guardianship of the county. He is therefore at this day considered as an officer of great antiquity, trust, and authority, having, according to Lord Coke, *triplicem custodiam*, viz. *vite justitie*, *vite legis*, et *vite reipublice*, *vite justitie*, to serve process, and to re-
turn

turn indifferent juries for the trial of men's lives, liberties, lands, and goods; *vita legis*, to execute process and make execution, which is the life of the law; and *vita reipublica*, to keep the peace.

It was ordained by the statute 28 Edw. I. c. 8. that the people should have the election of sheriffs in every shire, where the office is not of inheritance; for, anciently, in some counties the sheriffs were hereditary, as it seems they were in Scotland until the statute of 20 Geo. II. c. 43. and still continue in the county of Westmoreland, of which the earl of Thanet is the hereditary sheriff. The city of London too has the inheritance of the shrievalty of Middlesex by charter. This office may also descend to, and be executed by, a female; for Anne countess of Pembroke was hereditary sheriff of Westmoreland, and exercised the office in person, sitting at the assizes at Appleby on the bench with the judges. And although at this day the king has the sole appointment of sheriffs, except in counties palatine, and where there are *jura regalia*, yet he cannot apportion or divide it, that is, he cannot determine it in part, as for one town or one hundred; neither can he abridge the sheriff of any thing incident or belonging to his office.

QUALIFICATION AND EXEMPTION. It is provided by several acts of parliament, that no man shall be sheriff of any county unless he have in it sufficient lands to answer the king and his people, in case of complaint against him; and that no one that is steward or bailiff to a great lord shall be made sheriff, unless he be put forth of service. The king having an interest in every subject, and a right to his service, it is holden that no man can be exempt from the office of sheriff, but by act of parliament, or letters patent. Excommunication was held to be no excuse, because the party might have removed that disability; but a prisoner for debt is not bound. A man disabled by a judgment in law is excused. Attornies are privileged under all circumstances; and so by statute 2 Geo. III. c. 20. are all persons during the time they act as militia officers. No person can be placed or chosen in any office of mayor, sheriff, or other office of magistracy, place, trust, or employment, concerning the government of any city, corporation, borough, cinque-port, and their members, or other port-town, that shall not have, within one year next before such choice, taken the sacrament according to the rites of the church of England: and every such person must take the oaths of allegiance and supremacy at the time when the oath for the due execution of the office shall be administered. And in default, such choice shall be void. Protestant dissenters who are exempted by the toleration act, 1 Will. & Mary, stat. 1. c. 18. from the

obligation of complying with the requisition of the corporation act, and who can plead their non-compliance as a reasonable and sufficient excuse, are not compellable to serve this office, nor of course to pay any fine for refusal,

APPOINTMENT AND OATH. The high sheriff has his authority given him by two patents; by the one the king commits to him the custody of the county, and by the other, commands all other his subjects within that county to be aiding and assisting to him in all things belonging to his office. By the statute 9 Edw. 1. 2. the chancellor, treasurer, and judges are to meet on the morrow of *All Souls*, being the third of November, every year, in the exchequer chamber, to nominate persons to be made sheriffs; but by 24 Geo. II. c. 48. sheriffs are to be appointed on the morrow of Saint Martin. And the manner is, the lord chancellor, treasurer, and other high officers, being of the privy council, together with the judges of both benches, and the barons of the exchequer, being assembled in the exchequer chamber, nominate three persons in every county, to be presented to the king, that he may prick one of them to be sheriff; but the king, by his prerogative, may make and appoint the sheriffs without this usual election or nomination in the exchequer, as is the daily practice on the death of any sheriff. When the king appoints a person sheriff, who is not one of the three nominated in the exchequer, he is called a *pocket sheriff*. It is probable that no compulsory instance of the appointment of a pocket sheriff ever occurred; the prerogative is ungracious, and whenever exercised, unless the occasion is manifest, the whole administration of justice throughout one county for a twelvemonth, if not corrupted, is certainly suspected. The sheriffs in the counties of Wales are nominated yearly by the lord president, council, and justices of Wales, and certified up by them, and after appointed and elected by the king as other sheriffs are.

Before he exercises any part of his office, and before his patent is made out, the sheriff is to give security in the king's remembrancer's office in the exchequer under pain of 100*l.* for the payment of his proffers, and all other profits of his sheriffwick; but these securities are never sued, unless there is a deficiency in the sheriff's effects. He also takes a particular oath of office, which is said to be by the ancient common law, and contains a concise enumeration of the nature and several branches of his office. There being, however, in this oath, some things which were thought too strict, it is now enacted by the 3 Geo. I. c. 15. that the following shall be taken by all high sheriffs, except those of Wales, and the counties palatine:

" I will well and truly serve the king's majesty in the office of
 " sheriff;

“ sheriff, and promote his majesty’s profit in all things that
 “ belong to my office, as far as I legally can or may. I will
 “ truly preserve the king’s rights, and all that belongs to the
 “ crown. I will not assent to decrease, lessen, or conceal the
 “ king’s rights, or the rights of his franchises; and where-
 “ soever I shall have knowledge that the rights of the crown
 “ are concealed or withdrawn, be it in lands, rents, franchises,
 “ suits, or services, or in any other matter or thing, I will do
 “ my utmost to make them be restored to the crown again;
 “ and if I may not do it myself, I will certify and inform the
 “ king thereof, or some of his judges. I will not respite or
 “ delay to levy the king’s debts for any gift, promise, reward,
 “ or favour, where I may raise the same without great griev-
 “ ance to the debtors. I will do right as well to poor as to
 “ rich, in all things belonging to my office. I will do no
 “ wrong to any man for any gift, reward, or promise, nor for
 “ favour or hatred. I will disturb no man’s right, and will
 “ truly and faithfully acquit, at the exchequer, all those of
 “ whom I shall receive any debts or duties belonging to the
 “ crown. I will take nothing whereby the king may lose, or
 “ whereby his right may be disturbed, injured, or delayed. I
 “ will truly return, and truly serve all the king’s writs, accord-
 “ ing to the best of my skill and knowledge. I will take no
 “ bailiffs into my service but such as I will answer for, and
 “ will cause each of them to take such oaths as I do in what
 “ belongs to their business and occupation. I will truly set
 “ and return reasonable and due issues of them that be within
 “ my bailiwick, according to their estate and circumstances;
 “ and make due panels of persons able and sufficient, and not
 “ suspected or procured, as is appointed by the statutes of this
 “ realm. I have not sold, or let to farm, nor contracted for,
 “ nor have I granted or promised for reward or benefit, nor
 “ will I sell or let to farm, nor contract for, or grant for re-
 “ ward or benefit, by myself, or any other person for me, or
 “ for my use, directly or indirectly, my sheriffwick, or any
 “ bailiwick thereof, or any office belonging thereunto, or the
 “ profits of the same, to any person or persons whatsoever. I
 “ will truly and diligently execute the good laws and statutes
 “ of this realm, and in all things well and truly behave myself
 “ in my office, for the honour of the king, and the good of his
 “ subjects, and discharge the same according to the best of my
 “ skill and power.” A refusal of the oaths enjoined to be
 taken amounts to a refusal of the office; but if the sheriff is
 not in London, the oath may be taken by *dedimus potestatem*, di-
 rected to any two justices of the peace of the same county, one
 to be of the quorum, or to any other commissioners, or before

one of the judges of assize for that county, or one of the masters in chancery, who, it is said, may, as well as the judge, administer such oath without any *dedimus*. The breach or violation of this oath, although an high offence, is not however punishable as perjury.

By stat. 25 Chas. II. c. 2. the sheriff must also,⁷ within six calendar months after his election, take and subscribe the oaths of allegiance, supremacy, and abjuration, in one of the courts at Westminster, or at the general or quarter-session of the place where he shall be or reside, between the hours of nine and twelve in the forenoon, and no other; and within three months after election, receive the sacrament, according to the rites of the church of England, in some public church on the Lord's day; and in the court where he takes the oaths of allegiance, &c. he must first deliver a certificate of having received the sacrament, under the hand of the minister and churchwarden, and then make proof thereof by two witnesses on oath; he must also, at the same time, make and subscribe the declaration against transubstantiation. But now, by 16 Geo. II. c. 30., the time is enlarged to six months after admittance and receiving the authority, and the not complying shall incur all the disabilities of 25 Chas. II. The sheriffs of Wales and Chester are not obliged to take these oaths, but must take the ancient accustomed oath, except certain words, obliging them to reside in their bailiwicks. Nor does the oath of office extend to the sheriffs of London and Middlesex, the county palatine of Durham, the county of Westmoreland, or to the sheriffs of any city or town being a county of itself, so as to prevent their placing in, or dispossessing of any of the offices of their under sheriffs, county-clerks, bailiffs, or other officers, or their continuance therein. After the sheriff has taken the oaths before-mentioned, then on the writ of discharge being delivered to his predecessor, the old sheriff, or his under-sheriff, at or before the next county court, the new sheriff must take over from the old one all his prisoners, which are in the gaol, by their names, and all his writs precisely by view, and by indenture to be made between them, in which the retiring sheriff must, at his peril, specify all the causes which he has against every prisoner, as the new sheriff is not responsible in any matter which is omitted. The ancient sheriff is not discharged, nor the new sheriff charged, till three things are done, viz. the patent to the new sheriff, the writ of discharge to the old sheriff, and the delivery of the prisoners by indenture to the new sheriff.

A sheriff cannot be elected knight of the shire for that county for which he is sheriff; and although he is, by virtue of his office, a conservator of the peace, yet it is enacted by the

1 Mar. ft. 2. c. 8. that no person having the office of sheriff of any county, shall exercise in that county, and during that period, the functions of justice of the peace. By the 1 Hen. V. c. 4. it is also enacted, that no under-sheriff, sheriff's clerk, receiver, nor sheriff's bailiff, shall be an attorney in any of the king's courts during the time that he is in office.

JURISDICTION AND DURATION OF AUTHORITY. By the common law, the patents of sheriffs, like all other commissions; determined by the death of the king; but now, by the 7 Will. and Mary, c. 27. and 1 Anne, ft. 1. c. 8. such commission shall remain in full force for the space of six months after such event, unless superseded, or made void by the successor. By the 14 Edw. III. c. 7. it is, however, enacted, that no sheriff, under-sheriff, nor sheriff's clerk, shall abide in his office above one year, on penalty of two hundred pounds yearly; a pardon for such offence or forfeiture to be void; as are letters patent made to occupy such office above one year; and the person acting by force of them to be disabled ever after from being sheriff in any county in England. By the 1 Rich. II. c. 11. it is enacted, that none that has been sheriff of any county a year, shall within the next two years be chosen again, if there be others sufficient; and by the 1 Hen. V. c. 4. it is enacted, that they that be bailiffs of sheriffs for one year, shall be in no such office three years next following, except bailiffs of sheriffs who inherit their office. The clause in the stat. 4 Hen. IV. c. 5. obliging every sheriff to be dwelling within his bailiwick, is not now considered as operative, and the clause is left out of the oath; yet hence it is clear that a sheriff has no jurisdiction in any other county, nor can he do a judicial act, in which his personal presence is required out of his county. It is held that he may do a ministerial act, as make a panel, or return a writ, out of his county; but if the sheriff be beyond sea, and make a panel or any return there, and send it into England, it is not good, for he is an officer only in England. If on a *habeas corpus*, &c. the sheriff is commanded to carry a prisoner to a place out of his county, and in so doing he is obliged to pass through several counties, his authority continues; and if a prisoner escapes into another county, the sheriff, or his officers, upon fresh suit may take him again.

DUTIES. The powers and duties of the sheriff arise either as a judge, as-keeper of the king's peace, as a ministerial officer of the superior courts of justice, or as the king's bailiff. In his judicial capacity he is to hear and determine all causes not exceeding forty shillings value in his county court; and he has also a judicial power in divers other civil cases. In a writ of *redressin*, the sheriff acts as judge, as well as minister; so in inquiry

inquiry of waste, and admeasurement of pasture ; when he executes his *judicial* authority, he must do it in person, and it is not sufficient by the under-sheriff, or other deputy. As the keeper of the king's peace, both by common and special commission, he is the first man in the county, and superior in rank to any nobleman. He may apprehend and bind in a recognizance, or commit to prison, all persons who break, or attempt to break the peace. He may, and is bound *ex officio* to pursue, and take all traitors, murderers, felons, and other misdoers, and commit them to gaol for safe custody. He is also to defend his county against any of the king's enemies ; and for this purpose, as well as for keeping the peace, and pursuing felons, he may command all the people of his county to attend him ; which is called the *posse comitatus*, or power of the county. This summons, every person above fifteen years old, and under the degree of a peer, is bound to attend, upon warning, under pain of fine and imprisonment. 2 Hen. V. c. 8. But although the sheriff is thus the principal conservator of the peace in his county, yet by the express directions of the great charter, cap. 17. he, together with the constable, coroner, and certain other officers of the king, are forbidden to hold any pleas of the crown, or, in other words, to try any criminal offence ; for it would be highly unbecoming, that the executioners of justice should be also the judges ; should impose, as well as levy, fines and amercements ; should one day condemn a man to death, and personally execute him the next. Neither, as has been said before, may he act as an ordinary justice of the peace within his county, during the time he acts as sheriff. In his ministerial capacity, the sheriff is bound to execute and return all process issuing from the king's courts to him directed. In the commencement of civil causes he is to serve the writ, to arrest, and to take bail ; when the cause requires trial, he must summon and return the jury ; and when it is determined, he must see the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, returns the jury, has the custody of the delinquent, and executes the sentence of the court, though it extends to death itself. The ministerial office of sheriff consists in bailment of prisoners ; in making replevin ; in election of knights and burgesses for parliament, coroners and verderors ; in attendance upon the judges, justices, &c. ; in proclamation of statutes, and in keeping and collecting the rights and revenues of the king. As the king's bailiff, it is his business to preserve the rights of the king within his bailiwick ; he must seize to the king's use all lands devolved to the crown by attainder or escheat ; levy all fines and forfeitures ; seize and keep all waifs, wrecks, estrays, and the like, unless they are granted

granted to some subject; and must also collect the king's rents within his bailiwick, if commanded by process from the exchequer. As soon as he is made sheriff, he is accountable to the king for all farms, rents, issues, and profits of the county, which run in account under the name of viscountiels. But for the escheats of the green wax out of the exchequer, and some other matters, he is not chargeable. All writs and process are directed to the sheriff, neither he nor his officers are to dispute the authority of the court out of which they issue, but, at their peril, truly to execute them as commanded, without favour, and with the utmost expedition and secrecy; but, on the other hand, he must not be guilty of oppression, nor make use of other force or greater violence than the occasion requires.

The sheriff is an officer of that eminence, confidence, and charge, that he ought to have all right pertaining to his office, and ought to be favoured in law, before any private person.

CORONER. The coroner, *coronator*, is so called, because he is principally engaged in pleas of the crown. In this light the lord chief justice of the king's bench is the principal coroner in the kingdom, and may (if he pleases) exercise the jurisdiction of a coroner in any part of the realm; but there are also particular coroners for every county of England; usually four, but sometimes six, and sometimes seven. This office is of equal antiquity with that of sheriff; and they were ordained together to keep the peace when the earls gave up the wardship of counties. The coroner is still chosen by all the freeholders in the county court. For this purpose there is a writ at common law, *de coronatore eligendo*; and it was enacted by the statute of Westm. 1. that none but lawful and discreet knights should be chosen. There was an instance in the 5 Edward III. of a man being removed from the office, because he was only a merchant; but it is now sufficient if the person elected has lands enough to be made a knight, whether he is really knighted or not: for the coroner ought to have an estate sufficient to maintain the dignity of his office, and answer any fines that may be set upon him for misbehaviour; and if he has not enough to answer, his fine may be levied on the county, as the punishment for electing an insufficient officer. Now indeed, through the neglect of gentlemen of property, the office is generally solicited for the sake of emolument, coroners being allowed fees for their attendance by the statute 3 Hen. VII. c. 1. The coroner is chosen for life; but may be removed, either by being made sheriff, or chosen verderor, which are offices incompatible with the other; or by the king's writ, *de coronatore exonerando*, for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years

or sickness, has not a sufficient estate, or lives in an inconvenient part of the county; and by the statute 25 Geo. II. c. 29. extortion, neglect, or misbehaviour, are also made causes of removal. The office and power of a coroner are also, like those of the sheriff, either judicial or ministerial, but principally judicial. This is in a great measure ascertained by statute 4 Edw. I. *de officio coronatoris*; and consists, first, in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death, which must be on view of the body; for if that is not found, the coroner cannot sit. He must also sit at the very place where the death happened; and his inquiry is made by a jury from four, five, or six, of the neighbouring towns, over whom he is to preside. If any be found guilty by this inquest of murder, or other homicide, he is to commit them to prison for further trial, and is also to inquire concerning their lands, goods, and chattels, which are forfeited thereby: but whether it be homicide or not, he must inquire whether any deadand has accrued to the king, or the lord of the franchise, by the death; and must certify the whole of this inquisition (under his own seal, and the seals of the jurors), together with the evidence thereon, to the court of king's bench, or the next assizes. Another branch of his office is to inquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods. Concerning treasure trove, he is also to inquire who were the finders, and where it is; and whether any one is suspected of having found and concealed a treasure, whereupon he might be attached and held to bail, upon this suspicion only. The ministerial office of the coroner is only as the sheriff's substitute; for when just exception can be taken to the sheriff, for suspicion of partiality, (as that he is interested in the suit, or of kindred to either plaintiff or defendant) the process must then be awarded to the coroner, and he, instead of the sheriff, must execute the king's writs.

To execute his various duties, the sheriff has under him many inferior officers, viz. an under-sheriff, bailiffs, and gaolers; who, by 3 Geo. I. c. 15., must neither buy, sell, nor farm their offices, on forfeiture of 500*l.*

UNDER-SHERIFFS. As the law, from necessity, and in furtherance of justice, allows the sheriff to make a deputy, it is fit that in all things in which the high sheriff's personal presence is not required, the deputy should have the same power with himself; and as by the nomination there is implicitly conferred on him a power of doing all such offices as the sheriff himself could execute, and which may be transferred by the law; it is likewise held, that the deputy's authority is by law so equal with
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the principal's, that any condition, covenant, or other bargain to restrain it is void; and therefore it is now universally agreed, that the under-sheriff may make bills of sale upon executions, assign bail-bonds, make returns to writs, and, in general, do every thing that the sheriff himself can do. He is appointed by deed, which is afterwards filed in the king's remembrancer's office in the exchequer. The high-sheriff, by law, is answerable for the conduct of his under-sheriff, yet he is not to be punished criminally for his acts, nor to be imprisoned, nor indicted for his misdemeanors. He may constitute and remove him at his will, even though by the deed he should declare him irrevocable; but by rules of the several courts, before the new sheriff returns any writ into chancery, the king's bench, common pleas, or exchequer, he ought to make and have an attorney, or deputy of record, there to receive all manner of writs and warrants to be delivered to them.

There are ancient laws, that no under-sheriff, or sheriff's clerk shall continue in office more than a year, or be a practising attorney; however wisely these laws may have been framed, there is reason at present to doubt their policy, for in the execution of so important an office, experience and knowledge are both highly requisite. The under-sheriff takes an oath detailing most of the duties of his office, and binding himself to execute them faithfully, and that he has not sold, or contracted for, or let to farm, nor granted or promised for reward or benefit, directly or indirectly, any bailiwick, or any other appointment belonging to his office. He must also take the oaths of allegiance, supremacy, and abjuration, receive the sacrament, and subscribe the declaration against transubstantiation, in the same manner as the high-sheriff, and within the same time.

Besides these oaths, the under-sheriff binds himself by an obligation, with sureties, and covenants with his superior to the following points:

1. To save the high-sheriff harmless.
2. To make the account in the exchequer, and procure the high-sheriff's discharge.
3. To return juries with the privity of the sheriff.
4. To execute no process of weight without the sheriff's privity.
5. To account to the sheriff and attend him.
6. To be ready to attend the sheriff.
7. For his good behaviour in his office.
8. To take or use no extortion. And,
9. To give attendance at the king's court.

BAILIFFS. The officers of the sheriff are of three kinds; first *bailiffs in fee*, or perpetual bailiffs, who have, by charter or prescription, the execution of writs within the guildable,

secondly, *common bailiffs*, who are usually bound with sureties to the sheriff, in an obligation for the due execution of their office, and thence are called bound bailiffs; thirdly, *special bailiffs*, nominated by the plaintiff or his attorney, and appointed by the sheriff *pro hac vice*. Blackstone says, bailiffs or sheriff's officers, are either bailiffs of hundreds, or special bailiffs. Bailiffs of hundreds are officers appointed over those respective districts by the sheriffs to collect fines, to summon juries, to attend the judges and justices at the assizes and quarter sessions, and also to execute writs and process in the several hundreds; but as these are generally plain men, and not thoroughly skilful in this latter part of their office, that of serving writs and making arrests and executions, it is now usual to join special bailiffs with them; and these being, as already is mentioned, bound for the due execution of their office, the sheriff is answerable for all their misdemeanors, but he has recourse to their sureties for an indemnity. The sheriff's officer ought to execute his warrant with all speed and secrecy, and he is bound to pursue the effect of it in every behalf, otherwise it will not excuse him. A sworn and known officer, (be he sheriff, under-sheriff, bailiff, or serjeant) need not shew his warrant or writ when he comes to serve it upon any man's person or goods, although the party demand it; but a special bailiff, or other person, who is no sworn and known officer, must shew his authority or warrant, or the party may make resistance.

ARREST. Arrest, in common law, is the apprehending or restraining of one's person, in execution of the command of some court, or officer of justice. Arrest for debt is in two modes, the one on what is called *mesne process*, that is, where there is no judgment of a court against the party, but only an affidavit made by his creditor, that he owes him to the amount of 10*l.* at least; and from this the person arrested may be set at liberty on finding bail to the sheriff, as here after mentioned. The other arrest is on what is called *final process*, or where judgment has been obtained, and from this there is no discharge, but by payment of the money directed to be levied. An arrest must be, "by corporal seizing or touching the defendant's body;" after which the bailiff may justify breaking open the house, in which he is, to take him: otherwise he has no such power, but must watch his opportunity to arrest him; for every man's house is his castle of defence and asylum, wherein he should suffer no violence. If a bailiff lays hold of one by the hand (whom he has a warrant to arrest) as he holds it out of the window, this is a sufficient taking to justify the breaking open the house to carry him away. A bailiff may also break open the door of a lodger, having first gained peace-
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able entrance at the outer door of the house. It is also to be observed, that the privilege of a man's house only extends to the owner, and will not protect any man that flies to it to escape the ordinary process of law, nor the goods of any person received into it to prevent lawful execution. Therefore, if the sheriff, having process against a stranger, desire to have the door opened, or to have the body of the party flying thither, if after such request, denial or refusal be made, the sheriff or his officers may lawfully break open the house, and execute the process. Where persons having authority to arrest or imprison, and, using proper means, are resisted, and the party making resistance is killed in the struggle, this homicide is justifiable; but, on the other hand, if the officer happen to be killed, it will be murder in all who take part in such resistance; for it is homicide committed in despite of the justice of the kingdom. The statute 29 Chas. II. c. 7. enacts, that on the Lord's day no writ or process shall be served or executed (except in cases of treason, felony, or breach of the peace), and persons arrested on that day may recover damages as if no writ or process had issued.

PRIVILEGED PLACES. No arrest ought to be made in the king's palace at Westminster, where his royal person resides, (except where the process issues out of the palace court) or in the king's presence, nor in any place where his justices are actually sitting. Formerly one of the greatest obstructions to public justice, both civil and criminal, was the number of pretended privileged places, especially in London and Southwark, where dishonest persons could shelter themselves from justice, under pretext of their being ancient palaces of the crown; such as White Friars, the Savoy, Salisbury-court, Ram-alley, Mitre-court, Fuller's-rents, Baldwin's gardens, Montague close, or the Minories, the Mint clink, and Deadman's place, within the hamlet of Wapping or Stepney. All these sanctuaries for iniquity are now demolished, and the opposing of any process in any of them is made highly penal by stat. 8 and 9 W. III. c. 27. 9 Geo. I. c. 28. and by 11 Geo. I. c. 22., which enacts that persons opposing the execution of any process in such pretended privileged places, or abusing any officer in his endeavours to execute his duty, so that he receives bodily hurt, shall be guilty of felony, and transported for seven years: and persons in disguise, joining in, or abetting any riot or tumult, on such account, or committing the same offences, shall be felons without benefit of clergy.

PRIVILEGED PERSONS. The persons by law privileged from arrest are, the king, the queen, whether regnant, consort, or dowager; all peers of the realm and parliament; peeresses by birth,

birth, and by marriage, until they lose their privileges by espousing a commoner; members of the lower house of parliament; ambassadors and their servants, if *bona fide* retained; all these are absolutely and generally privileged, except the members of the house of commons, and their privilege is, by contrivance, rendered perpetual. To some other persons perpetual or temporary privilege is given. The king's domestic servants cannot be arrested without notice to the lord chamberlain; assistant officers of both houses of parliament down to the door-keepers, are privileged during the session, and until their return home; the clergy are protected while proceeding to and from church to perform divine service; judges and their necessary servants can in no case be arrested, but their clerks may; serjeants and barristers are not privileged; officers of the superior courts are; attornies have a limited privilege with respect to *mesne process*, but they may be taken in execution. The right of being exempted and freed from arrest by process of other courts, belongs to the lord chancellor, or keeper, and to all the masters, curators, ministers, and sworn clerks of the court of chancery, and to the menial servants of the chancellor or keeper, and of the ministers and officers. The clerk of the pells has privilege. Curator's clerk, auditor of the exchequer, and his servants, commissioners of the treasury, garter king of arms, receiver general of the revenues, clerk of the remembrancer, and an attorney of the exchequer, are intitled to privilege. The marshal of the King's Bench and warden of the Fleet are not to be arrested. Witnesses are protected in their necessary attendance, going to and returning from courts where they are called to give evidence; a bankrupt has his protection for forty-two days after actual surrender; soldiers and sailors, and persons in Wales and the counties palatine cannot be arrested, except in execution, unless the debt sworn to amounts to 20*l.* nor any other of his majesty's subjects, unless it amounts to 10*l.*

PERSONS ARRESTED. For the protection of persons who are arrested against insult, fraud, and extortion, the stat. 32 Geo. II. c. 28. provides that no sheriff or sheriff's officer shall convey them to any tavern or public house, or to any house of their own (which are commonly called lock-up-houses, or by an expressive nick-name, spunging-houses) without their free consent; and the officers are not to carry the debtor to prison in less than twenty-four hours after caption, unless he refuses to go to some other safe place of custody. The intent of this regulation is, that the unfortunate prisoner may not be made an object of gainful speculation on one hand, nor on the other, hurried to a common gaol, if he has reasonable hopes of procuring bail. The statute

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also contains strict regulations for prevention of imposition in charges for victuals and lodging, and the fair prices are directed to be publicly exhibited in the house of the bailiff.

If the person arrested means to dispute the justice of the plaintiff's claim, he is, by a late act of parliament framed by Lord Ellenborough, at liberty to pay into the hands of the sheriff the sum sworn to, with a certain additional sum for costs, and give notice that he will defend the action, and in that case the plaintiff cannot, as he formerly could, demand the money deposited, from the sheriff, but must proceed in the cause. If the defendant procures bail to the sheriff, they enter jointly with him into a bond with a penalty, double the amount of the debt sworn to, that good bail shall be put in at the return of the writ; but if the debtor can neither pay nor deposit the debt, nor find bail, he is conveyed to the gaol of the county in which he was arrested, or he may, by writ of *habeas corpus*, be removed to the King's Bench, or the Fleet prison; and in London and some other towns and cities, there are gaols set apart for the citizens, some of which have peculiar benefits. Of the proceedings subsequently taken by the plaintiff to compel the sheriff to do his duty, or pay his demand, or upon assignment of the bail-bond; or of the measures pursued by the defendant to prevent these advantages, and of all other matters which arise in the course of a suit, it would be too technical here to treat.

POUNDAGE. On levying an execution the sheriff is entitled to poundage, or an allowance of one shilling in the pound up to 100*l.*, and sixpence in the pound on all monies after the first 100*l.* This sum was formerly paid by the plaintiff, but by the act last mentioned it is to be levied on the defendant.

ESCAPE. In either case of bailable, or final process, if the defendant, after being taken, runs away, or is discharged from custody without due bail, to the injury or delay of the plaintiff, it is termed an escape, and the sheriff is liable to pay the debt and costs, which he may recover from the negligent officer or his sureties; but if a special bailiff is appointed at the request of the plaintiff, the sheriff is not answerable for his acts.

GAOLERS. Gaolers are also servants of the sheriff, and he must be responsible for their conduct. Their business is to keep safely all persons committed to them by lawful warrant: and if they suffer any such to escape, the sheriff must answer it to the king, if a criminal matter; or, in a civil case, to the party injured. The abuses of gaolers toward the unfortunate persons in their custody are also well restrained and guarded against by 32 Geo. II. c. 28; and by statute 14 Geo. III. c. 59. provisions are made for better preserving the health of prisoners, and preventing the gaol distemper.

JURIES. As causes relating to property alone, and prosecutions for crimes are both tried by juries, it is intended in this place to treat of every kind of jury, the subject being equally connected with the description of courts which has been before given, and that of criminal courts which is immediately to follow.

Before this, the most usual kind of trial, is described, it may be proper to notice some others, which are only had in certain special and eccentric cases; where the trial by the country, *per pais*, or by jury, would not be so proper or effectual. They are six: by record; by inspection or examination; by certificate; by witnesses; by wager of battel; and by wager of

TRIAL BY RECORD. This trial is only used where a matter of record is pleaded in any action, as a fine, a judgment, or the like; and the opposite party pleads, that there is no such matter of record existing: upon this, issue is tendered and joined, and the party pleading the record has a day given him to bring it in, and proclamation is made in court for him "to bring forth the record by him in pleading alleged, or else he shall be condemned;" and, on his failure, his antagonist shall have judgment to recover. The trial therefore of this issue is merely by the record; for, as Sir Edward Coke observes, a record or enrolment is a monument of so high a nature, and imports in itself such absolute verity, that if it be pleaded that there is no such record, it shall not receive any trial by witness, jury, or otherwise, but only by itself. Thus titles of nobility, as whether earl or no earl, baron or no baron, shall be tried by the king's writ or patent only, which is matter of record. Also in case of an alien whether alien friend, or enemy, shall be tried by the league or treaty between his sovereign and ours; for every league or treaty is of record. And also, whether a manor be to be held in ancient demesne, or not, shall be tried by the record of *domesday* in the exchequer.

INSPECTION. Trial by inspection, or examination, is when in some point or issue, evidently the object of sense, the judges of the court decide the point on the testimony of their own senses; for in matters of such obvious determination, it is not thought necessary to summon a jury, who are properly called in to inform the conscience of the court, in respect of dubious facts: thus in some cases of age, death, and maim, the court may decide by examination of the person; and in some relating to days and times by inspection of the almanac.

CERTIFICATE. The trial by certificate is allowed in cases where the evidence of the person certifying is the only proper criterion of the point in dispute. For, when the fact in question

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lies out of the cognizance of the court, the judges must rely on the solemn averment or information of persons in such a station, as affords them the most clear and competent knowledge of the truth, and to save trouble and circuit, permits the fact to be determined upon such certificate merely; Of this mode of trial, many instances are given in old books, but few now remain; the principal is the mode of trying the custom of the city of London by the certificate of the mayor and aldermen, delivered by the mouth of their recorder; but to this rule there is an exception, where the corporation of London is party; or interested; and there are other cases:

TRIAL BY WITNESSES. The trial by witnesses, *per testes*, without the intervention of a jury, is the only method of trial known to the civil law; it leaves the judge to form in his own breast his sentence upon the credit of the witnesses examined: but this trial is very rarely used in our law, which in almost every instance prefers the trial by jury. When, however, a widow brings a writ of dower, and the tenant pleads that the husband is not dead; this being looked upon as a dilatory plea; is, for the sake of favouring the widow, and for greater expedition, allowed to be tried by witnesses examined before the judges; it is also used in some other cases; and it is said that in such trials, the affirmative must be proved by two witnesses at least.

WAGER OF BATTEL. The trial by wager of battel is of great antiquity, but much disused: though still in force if the parties chuse to abide by it. It seems to have owed its origin to the military spirit and superstition of our ancestors, it being in the nature of an appeal to Providence, under an apprehension and hope (however presumptuous and unwarrantable) that heaven would give the victory to him who had the right. This trial was introduced into England among other northern customs by William the Conqueror; but was only used in three cases, one military, one criminal, and the third civil. The first in the court martial, or court of chivalry and honour; the second in appeals of felony; and the third upon an issue joined in a writ of right, the last and most solemn decision of real property.

The last trial by battel that was waged in the court of common pleas at Westminster (though there was one afterwards in the court of chivalry, in 1631; and another in the county palatine of Durham, in 1638,) was in the thirteenth year of Elizabeth, 1571, as reported by Sir James Dyer; and was held in Tothill-fields, Westminster, to the great disquietude of those who were versed in the law. The form is as follows.

When the tenant in a writ of right pleads the general issue,

viz. that he has more right to hold, than the demandant has to recover ; and offers to prove it by the body of his champion, which tender is accepted by the demandant ; the tenant, in the first place, must produce his champion, who, by throwing down his glove as a gage or pledge, wages or stipulates battel with the champion of the demandant ; and he, by taking up the gage, or glove, stipulates on his part to accept the challenge. The reason why it is waged by champions, and not by the parties themselves, in civil actions, is because, if any party to the suit dies, the suit must abate and be at an end for the present ; and therefore no judgment could be given for the lands in question, if either of the parties were slain in battel ; and also that no person might claim an exemption from this trial, as was allowed in criminal cases, where the battel was waged in person.

A piece of ground is then in due time set out, of sixty feet square, enclosed with lists, and on one side a court erected for the judges of the court of common pleas, who attend there in their scarlet robes ; and also a bar is prepared for the learned serjeants at law. When the court sits, which ought to be by sun-rising, proclamation is made for the parties, and their champions ; who are introduced by two knights, and are dressed in a coat of armour, with red sandals, bare-legged from the knee downwards, bare-headed, and with bare arms to the elbows. The weapons allowed them are only batons, or staves of an ell long, and a four-cornered leather target ; so that death very seldom ensued in this civil combat. In the court military indeed they fought with sword and lance, as likewise in France only villeins fought with the buckler and baton, gentlemen armed at all points. When the champions, thus armed with batons, arrive within the lists or place of combat, the champion of the tenant takes his adversary by the hand, and makes oath that the tenements in dispute are not the right of the demandant ; and the champion of the demandant, taking the other by the hand, swears in the same manner that they are ; so that each champion is, or ought to be, thoroughly persuaded of the truth of the cause he fights for. Next an oath against forcery and enchantment is to be taken by both the champions, in this, or a similar form : “ Hear this, ye justices, that I have
 “ this day neither eat, drunk, nor have upon me, neither bone,
 “ stone, ne grasse ; nor any enchantment, forcery, or witchcraft,
 “ whereby the law of God may be abused, or the law of the
 “ devil exalted. So help me God and his saints.” The battel is thus begun, and the combatants are bound to fight till the stars appear in the evening : and, if the champion of the tenant can defend himself till the stars appear, the tenant shall

shall prevail in his cause; for it is sufficient for him to maintain his ground, and make it a drawn battel, he being already in possession; but, if victory declares itself for either party, for him is judgment finally given. This victory may arise from the death of either of the champions: which indeed has rarely happened; the whole ceremony, to say the truth, bearing a near resemblance to certain rural athletic diversions, which are probably derived from this original. Or victory is obtained, if either champion proves *recreant*, that is, yields, and pronounces the horrible word of *craven*; a word of disgrace and obloquy, rather than of any determinate meaning. But a horrible word it indeed is to the vanquished champion: since, as a punishment to him for forfeiting the land of his principal, by pronouncing that shameful word, he is condemned, as a recreant, *amittere liberam legem*, that is, to become infamous, and not be accounted *liber et legalis homo*; being supposed by the event to be proved forsworn, and therefore never to be put upon a jury, or admitted as a witness in any cause.

This is the form of trial by battel; a trial which the tenant, or defendant in a writ of right, has it in his election at this day to demand: and which was the only decision of such writ of right after the conquest, till Henry II. by consent of parliament introduced the *grand assize*, a peculiar species of trial by jury, in concurrence therewith; giving the tenant his choice of either the one or the other: this was justly considered a most noble improvement of the law.

WAGER OF LAW. Our ancestors, considering that in many cases an innocent man of good credit might be overborne by a multitude of false witnesses, established this species of trial, by the oath of the defendant himself. He that waged, or gave security, to make his law, brought with him into court eleven of his neighbours, and then standing at the end of the bar, was admonished by the judges of the nature and danger of a false oath. And if he still persisted, he was to repeat this or the like oath: "Hear this, ye justices, that I do not owe unto Richard Jones the sum of ten pounds, nor any penny thereof, in manner and form as the said Richard has declared against me. So help me God." And thereupon his eleven neighbours or compurgators avowed upon their oaths, that they believed in their consciences that he said the truth. In England wager of law is never required; and is only admitted, where an action is brought upon such matters as may be supposed to be privately transacted between the parties, and wherein the defendant may be presumed to have made satisfaction without being able to prove it. Therefore it is only in actions of debt, upon simple contract, or for amercement, in actions of detinue, and of ac-

count, where the debt may have been paid, the goods restored, or the account balanced, without any evidence of either, that defendant is admitted to wage his law: it cannot be done when there is any speciality (as a bond or deed) to charge the defendant, for that, if satisfied, would be cancelled; but when the debt grows by word only: nor does it lie in action of debt for arrears of an account, settled by auditors in a former action. And by such wager of law (when admitted) the plaintiff is perpetually barred; for the law, in the simplicity of the ancient times, presumed that no one would forswear himself for any worldly thing. Wager of law however lies in a real action, where the tenant alleges he was not legally summoned to appear, as well as in mere personal contracts. There are many nice distinctions in the cases where wager of law could, or could not, be admitted; the result of which in general is, that it should never be allowed, but where the defendant bore a fair and unapproachable character; and it also was confined to such cases where a debt might be supposed to be discharged, or satisfaction made in private, without any witnesses to attest it: and many other prudential restrictions accompanied this indulgence. But at length it was considered, that (even under all its restrictions) it threw too great a temptation in the way of indigent or profligate men; and therefore by degrees new remedies were devised, and new forms of action were introduced, wherein no defendant is at liberty to wage his law. So that now no plaintiff need at all apprehend any danger from the hardness of his debtor's conscience, unless he voluntarily chuses to rely on his veracity, by bringing an obsolete instead of a modern action; and wager of law is quite out of use, although not out of force. For this reason, when a new statute inflicts a penalty, and gives an action of debt for recovering it, it is usual to add, "in which no wager of law shall be allowed:" otherwise an hardy delinquent might escape any penalty, by swearing he had never incurred, or else had discharged it.

TRIAL BY JURY. From these modes of deciding causes we return to the trial by jury; called also the trial *per pais*, or by the country; a trial that has been used time out of mind in this nation, and seems to have been coeval with its first civil government. Some authors have endeavoured to trace the origin of juries to the Britons, the first inhabitants of the island; but it is certain they were in use among the earliest Saxon colonists. Many ascribe the invention of this, and some other pieces of juridical polity, to the superior genius of Alfred the Great; to whom, on account of his having done much, it is usual to attribute every thing; whereas the truth seems to be, that this tribunal was universally established among the northern nations,

nations, and so interwoven with their very constitution, that the earliest accounts of the one give also some traces of the other. Its establishment, however, and use, in this island, of what date soever it be, though for a time greatly impaired and shaken by the introduction of the Norman trial by battel, was always so highly esteemed and valued by the people, that no conquest, no change of government, could ever prevail to abolish it. In *magna charta* it is more than once insisted on, as the principal bulwark of our liberties; but especially by chap. 29. that no freeman shall be hurt in either his person or property; "*nisi per legale judicium parium suorum vel per legem terre.*"

Trials by jury in civil causes, are of two kinds; *extraordinary* and *ordinary*.

The first species of extraordinary trial by jury is that of the grand assize, which was instituted as already mentioned, by Henry II. For this trial a writ *de magna assisa eligenda* is directed to the sheriff, to return four knights, who are to elect and chuse twelve others to be joined with them; and these together form the grand assize, or great jury to try the matter of right.

Another species of extraordinary juries, is that to try an *attaint*; which is a process commenced against a former jury; it is to consist of twenty-four of the best men in the county, who are called the grand jury in the attaint, to distinguish them from the first or petit jury; and these are to hear and try the goodness of the former verdict.

With respect to the ordinary trial by jury in civil cases, it takes place in this manner. When an action has proceeded so far that one party affirms a fact which the other denies, and both pray that it may be inquired of by the country, it is said that *issue is joined*, and the court, as matter of course, awards such process as in ancient times placed the cause in a situation to be tried at the bar of the court, but now it is generally tried, as already mentioned, at *nisi prius*. This process is in its form compulsory, and awarded against the jurors; it is called in the common pleas a writ of *habeas corpora juratorum*, and in the king's bench a *distingas*, commanding the sheriff to have their bodies, or to distrain them by their lands and goods, that they may appear on the day appointed. The entry therefore on the roll or record is, "that the jury is respited, through the defect of the jurors, till the first day of the next term, then to appear at Westminster; *unless before that time* (*viz.* on a day mentioned,) the justices of our lord the king, appointed to take assizes in that county, shall have come to the place assigned for holding the assizes." And thereupon the writ commands the sheriff to have their bodies at

Westminster on the said first day of next term, or before the said justices of assize, if before that time they come to the place appointed; viz. on the day aforesaid. And as the judges are sure to come and open the circuit commissions on the day mentioned in the writ, the sheriff returns and summons this jury to appear at the assizes, and there the trial is had before the justices of assize and nisi prius.

When the general day of trials is fixed, the plaintiff or his attorney must bring down the record to the assizes, and enter it with the proper officers, in order to its being called on in course. If it be not so entered, it cannot be tried; therefore it is in the plaintiff's breast to delay any trial by not carrying down the record; unless the defendant, being fearful of such neglect in the plaintiff, and willing to discharge himself from the action, will himself undertake to bring on the trial, giving proper notice to the plaintiff. This proceeding, from certain particulars in form, is called the trial by *proviso*, but it is much disused, since the statute 14 Geo. II. c. 17. which enacts, that if, after issue joined, the cause is not carried down to be tried according to the course of the court, the plaintiff shall be esteemed to be non-suited, and judgment shall be given for the defendant as in case of a nonsuit. If the plaintiff intends to try the cause, he is bound to give the defendant due notice; which, if he changes his mind, he must regularly countermand, or pay the costs, occasioned to the defendant, by his not proceeding to trial.

All previous proceedings having been regularly settled, the cause is called on in court. The record is then handed to the judge to peruse, and observe the pleadings, and what issues the parties are to maintain and prove, while the jury is called and sworn. To this end the sheriff returns his compulsive process, the writ of *habeas corpora*, or *distingas*, with the panel or jurors annexed, to the judges' officer in court. The jurors contained in the panel are either *special* or *common* jurors. Special juries were originally introduced in trials at bar, when the causes were of too great nicety for the discussion of ordinary freeholders; or where the sheriff was suspected of partiality, though not upon such apparent cause as to warrant an exception to him. He is in such cases, upon motion in court on behalf of either party, and a rule granted thereupon, to attend the prothonotary or master, with his freeholders' book; and the officer is to take indifferently forty-eight of the principal freeholders in the presence of the attorneys on both sides: who are each of them to strike off twelve, and the remaining twenty-four are returned upon the panel. Special juries may be struck on the trial of any issue, as well at the assizes as at bar; as well in indictments and informations for misdemeanors,

means, as in civil actions; but there cannot be a special jury in cases of treason or felony, for the party must have the advantage of making twenty peremptory challenges in a prosecution for felony, and thirty-five in case of high treason. The party requiring the special jury also pays the extraordinary expence, unless the judge will certify (in pursuance of the statute 24 Geo. II. c. 18.) that the cause required it.

A *common jury* is one returned by the sheriff according to the directions of the statute 3 Geo. II. c. 25. which appoints, that the sheriff or officer shall not return a separate panel for every separate cause as formerly; but one and the same panel for every cause to be tried at the same assizes, containing not less than forty-eight, nor more than seventy-two jurors: and that their names being written on tickets, shall be put into a box or glass; and when each cause is called, twelve of these persons whose names shall be first drawn out of the box, shall be sworn upon the jury, unless absent, challenged, or excused; or unless a previous view of the messuages, lands, or place in question, shall have been thought necessary by the court: in which case six or more of the jurors, returned, to be agreed on by the parties, or named by a judge or other proper officer of the court, shall be appointed by special writ of *habeas corpora* or *disfringas*, to have the matters in question shewn to them by two persons named in the writ; and then such of the jury as have had the view, or so many of them as appear, shall be sworn in on the inquest before any other jurors. These acts are well calculated to restrain any suspicion of partiality in the sheriff, or any tampering with the jurors when returned.

As the jurors appear, when called, they are sworn, unless challenged by either party. *Challenges* are of two sorts; to the array, and to the polls.

Challenges to the array are at once an exception to the whole panel in which the jury are arrayed or set in order by the sheriff in his return; and they may be made on account of partiality or some default of the sheriff, or his under officer who arrayed the panel.

Challenges to the polls *in capita*, are exceptions to particular jurors; and are reduced to four causes; 1st. *On the score of honour*; as, if a lord of parliament be impanelled on a jury, he may be challenged by either party, or he may challenge himself. 2d. *On account of defect*; as, if a foreigner be included in the panel. 3d. *For supposed bias or partiality*; which may be either a *principal challenge*, or *to the favour*. A *principal challenge* is such, where the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favour: as, that a juror is of kin to either party within the ninth degree; that he has been

been arbitrator on either side ; that he has an interest in the cause ; that there is an action depending between him and the party ; that he has taken money for his verdict ; that he has formerly been a juror on the same cause ; that he is the party's master, servant, counsellor, steward, or attorney, or of the same society or corporation with him : all these are principal causes of challenge ; which, if true, cannot be over-ruled, for jurors must be above every exception. Challenges *to the favour*, are where the party has no principal challenge ; but objects only some probable circumstances of suspicion, as acquaintance and the like ; the validity of which must be left to the determination of the *triors*, whose office it is to decide whether the jury be favourable or unfavourable. The *triors*, in case the first man called be challenged, are two indifferent persons named by the court ; and, if they try one man and find him indifferent, he is sworn ; and then he and the two *triors* try the next ; and, when another is found indifferent and sworn, the two *triors* are superseded, and the first two sworn on the jury try the rest. The 4th cause of challenge is *on account of crime* ; which takes place when the intended juror has been guilty of some crime or misdemeanor, that affects his credit and renders him infamous : as for a conviction of treason, felony, perjury, or conspiracy ; or if for some infamous offence he has received judgment of the pillory, tumbrel, or the like ; or to be branded, whipt, or stigmatized ; or if he is out-lawed or excommunicated, or has been attainted of false verdict, *præmunire*, or forgery ; or lastly, if he has proved recreant when champion in the trial by battel, and thereby has lost his *liberam legem*. A juror may himself be examined on oath, with regard to such causes of challenge as are not to his dishonour or discredit ; but not with regard to any crime, or any thing which tends to his disgrace or disadvantage.

Besides these challenges, which are exceptions against the fitness of jurors, and whereby they may be excluded from serving, there are also other causes to be made use of by the jurors themselves, which are matters of exemption ; whereby their service is *excused* and *not excluded*. As by the statute West. 2. 13 Edw. I. c. 38. sick and decrepit persons, persons not commorant in the county, and men above seventy years old ; and by statute of 7 and 8 Will. III. c. 32. infants under twenty-one. This exemption is also extended by divers statutes, customs, and charters to physicians, and other medical persons, counsel, attorneys, officers of the courts, and the like ; who, all if impannelled, must shew their special exemption. Clergymen are also usually excused, out of favour and respect to their function : but, if they are seized of lands and tenements, they are in

strictness liable to be impanelled in respect of their lay fees, unless they are in the service of the king or of some bishop.

If by means of challenges or other cause, a sufficient number of unexceptionable jurors does not appear at the trial, either party may pray a *tales*. A *tales* is a supply of such men, as are summoned upon the first panel in order to make up the deficiency. For this purpose a writ of *decem tales, octo tales*, and the like, was used to be issued to the sheriff at common law, and must be still so done at a trial at bar, if the jurors make default. But at the assizes or *nisi prius*, by virtue of the statute 35 Henry VIII. c. 6. and other subsequent statutes, the judge is empowered, at the prayer of either party, to award a *tales de circumstantibus* of persons present in court, to be joined to the other jurors to try the cause; who are liable, however, to the same challenges as the principal jurors.

When a sufficient number of persons impanelled, or *talesmen* appear, they are then separately sworn, well and truly to try the issues between the parties, and a true verdict to give according to the evidence, and hence they are denominated the jury, *jurata*, and jurors, *juratores*.

The jury are now ready to hear the merits; and, to fix their attention more closely to the facts which they are to try, the pleadings are opened to them by counsel on that side which holds the affirmative of the question in issue. For the issue is said to lie, and proof is always first required, upon that side which affirms the matter in question. The opening counsel briefly informs them what has been transacted in the court above; the parties, the nature of the action, the declaration, the plea, replication, and other proceedings; and, lastly, upon what point the issue is joined, which is there sent down to be determined. Instead of which, formerly the whole record and process of the pleadings was read to them in English by the court, and the matter in issue clearly explained to their capacities. The nature of the case, and the evidence intended to be produced, are next laid before them by counsel also on the same side: and, when their evidence is gone through, the advocate on the other side opens the adverse case, and supports it by evidence; and then the party which began is heard by way of reply; but the reply is not allowed, except by the attorney-general, unless the defendant calls witnesses.

When the evidence is gone through on both sides, the judge, in the presence of the parties, the counsel, and all others, sums up the whole to the jury; omitting all superfluous circumstances, observing wherein the main question and principal issue lies, stating what evidence had been given to support it, with
such

such remarks as he thinks necessary for their direction, and giving them his opinion in matters of law arising upon that evidence: The jury, after the proofs are summed up, unless the case is very clear, withdraw to consider of their verdict: and, in order to avoid intemperance and causeless delay, are kept without meat, drink, fire, or candle, unless by permission of the judge, till they are unanimous in their decision. When they are so agreed, they return; and, before they deliver their verdict, the plaintiff is bound to appear in court, by himself, attorney, or counsel, in order to answer the amercement to which, by the old law, he is liable, in case he fails in his suit, as a punishment for his false claim. The amercement is disused, but the form still continues; and if the plaintiff does not appear, no verdict can be given, but the plaintiff is said to be *nonsuit*; therefore it is usual for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or withdraw himself: whereupon the crier is ordered to call the plaintiff; and if neither he, nor any body for him, appears, he is nonsuited; the jurors are discharged, the action is at an end, and the defendant recovers his costs. The reason of this practice is, that a nonsuit is more eligible for the plaintiff, than a verdict against him: for, after a nonsuit, which is only a default, he may commence the same suit again for the same cause of action; from which, after a verdict and judgment, he is for ever barred. If the plaintiff appears, the jury, by their foreman, deliver their verdict. When a verdict will carry all the costs, and it is doubtful from the evidence for which party it will be given, it is a common practice for the judge to recommend, and the parties to consent, that a *juror should be withdrawn*, and thus no verdict is given, and each party pays his own costs.

A verdict, is either privy, or public. A *privy verdict* is, when the judge has left or adjourned the court: and the jury, being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the judge out of court: this however is of no force, unless afterwards affirmed by a public verdict, given openly in court, wherein the jury may, if they please, vary from that which they had privately delivered. Thus the privy verdict is a mere nullity; and, as it allows time for the parties to tamper with the jury, is very seldom indulged; nor is it ever allowed in treason or felony. The public verdict alone is effectual and legal: in this the jury openly declare that they have found the issue for the plaintiff, or defendant; and if for the plaintiff, they assess his damages.

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Sometimes, if there arises in the case any difficult matter of law, the jury, for the sake of better information, and to avoid the danger of having their verdict attained, will find a *special verdict*; which is grounded on the statute Westm. 13 Edw. I. c. 30. In such a verdict, they state the naked facts, as they find them to be proved, and pray the advice of the court thereon; concluding conditionally, that if, upon the whole matter, the court shall be of opinion that the plaintiff had cause of action, they find for the plaintiff; if otherwise, for the defendant: this is entered at length on the record, and afterwards argued and determined in the court at Westminster, whence the issue came to be tried. Another method of finding a special verdict is, when the jury find generally for the plaintiff, but subject nevertheless to the opinion of the judge, or the court above, on a special case stated by the counsel on both sides with regard to a matter of law: which has this advantage over a special verdict, that it is attended with much less expence, and obtains a much speedier decision; the *posse*, or that writing indorsed on the record, which legally attests the fact of a verdict being found for either party, being stayed in the hands of the officer of *nisi prius*, till the question is determined; and the verdict is then entered for the plaintiff or defendant, as the case may happen. But in both these instances the jury may, if they think proper, take upon themselves to determine, at their own hazard, the complicated question of fact and law; and, without either special verdict or special case, may find absolutely either for the plaintiff or defendant.

When the jury have delivered in their verdict, and it is recorded in court, they are discharged. And so ends the trial by jury: a trial which, besides the other vast advantages, is also as expeditious and cheap, as it is convenient, equitable, and certain; for a commission out of chancery, or the civil law courts, for examining witnesses in one cause, will frequently last as long, and be full as expensive, as the trial of a hundred issues at *nisi prius*; and yet the fact cannot be determined by such commissioners, nor at all, till the depositions are published, and read at the hearing of the cause in court.

How much and how justly this mode of trial is favoured by the British nation need not here be displayed; but if it has so great an advantage over others in regulating civil property, it is evident that advantage is greatly heightened, when it is applied to criminal cases; since, in times of difficulty and danger, more is to be apprehended from the violence and partiality of judges, appointed by the crown, in suits between the king and the subject, than in disputes between individuals.

Our law has therefore wisely placed the strong and twofold barrier, of a presentment and trial by jury, between the liberties of the people and the prerogative of the crown. It was necessary to vest the executive power of the laws in the prince; but the founders of the English law have with excellent forecast contrived, that no man should be called to answer for any capital crime, unless on the preparatory accusation of a *grand jury*, consisting of twelve or more of his fellow subjects; and that the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen, and superior to all suspicion.

When a prisoner on his arraignment has pleaded not guilty, and for his trial has put himself upon the country, which country the jury are, the sheriff of the county must return a panel of jurors, free and lawful men of the neighbourhood; which is interpreted to be the county where the fact is committed. If the proceedings are before the court of King's-Bench, time is allowed, between the arraignment and the trial, for a jury to be impanelled, by writ of *venire facias*, to the sheriff, as in civil causes: and the trial, in case of a misdemeanor, is had at *nisi prius*, unless it be of such consequence as to merit a trial at bar; which is invariably had when the prisoner is tried for any capital offence. Before commissioners of oyer and terminer and jail delivery, the sheriff, by virtue of a general precept previously directed to him, returns to the court a panel of forty-eight jurors, to try all felons, who may be called on their trial at that session: and therefore it is there usual to try all felons immediately, or soon after their arraignment. But it is not customary, nor agreeable to the general course of proceedings, (unless by consent of parties, or where the defendant is actually in jail), to try persons indicted of smaller misdemeanors at the same court, in which they have pleaded not guilty, or traversed the indictment; they usually give security to the court, to appear at the next assizes or session, and then and there to try the traverse, giving notice to the prosecutor of the time.

When the trial is called on, the jurors are sworn as they appear, to the number of twelve.

Challenges may here be made, either on the part of the king, or of the prisoner; and either to the whole array, or to the separate polls, for the same reasons as in civil causes. Challenges on any of those accounts are styled challenges for cause, which may be without limit both in criminal and civil trials; but in criminal cases, or, at least, in capital ones, there

is allowed to the prisoner, but not to the crown, an arbitrary and capricious species of challenge to a certain number of jurors, without shewing any cause at all; which is called a *peremptory challenge*: a provision full of that tenderness and humanity to prisoners, for which our English laws are justly famous. The king need not however assign his cause of challenge, till all the panel is gone through, and unless there cannot be a full jury without the persons so challenged; and, in that case, and not sooner, the king's counsel must shew the cause; otherwise the jury must be sworn. The peremptory challenges of the prisoner must, however, have some reasonable boundary; otherwise he might never be tried; and this is settled by the common law to be the number of thirty-five; or one less than three full juries. The peremptory challenge of a greater number was regarded as a proof that the prisoner had no intention to be tried at all; and therefore the law dealt with one, who so challenged and would not retract, as one who stood mute, or refused his trial; by sentencing him to the *peine forte et dure* in felony, and by attainting him in treason. This law still subsists in cases of treason; but by statute 22 Hen. VIII. c. 14. (which with regard to felonies stands unrepealed by 1 & 2 Philip and Mary, c. 10.), no person arraigned for felony can be admitted to make any more than twenty peremptory challenges. If he exceeded, the old opinion was, that judgment of *peine forte et dure* should be given, as where he challenged thirty-six at the common law: but the better opinion seems to be, that such challenge should only be disregarded and overruled.

If, by reason of challenges or the default of the jurors, a sufficient number cannot be had of the original panel, a *tales* may be awarded as in civil causes, till the number of twelve is sworn, "well and truly to try, and true deliverance make, between our sovereign lord the king, and the prisoner whom they have in charge; and a true verdict to give, according to the evidence."

When the jury is sworn, if it be a cause of importance, the indictment is usually opened, and the evidence marshalled, examined, and enforced by the counsel for the crown or prosecution; but it is a settled rule at common law, that no counsel shall be allowed a prisoner on his trial, upon the general issue, in any capital crime, unless some point of law shall arise proper to be debated. This is apparently a defect in the administration of justice, and the judges themselves are so sensible of it, that they never scruple to allow a prisoner counsel to instruct him what questions to ask, or even to ask questions for him, with respect to matters of fact. And lest this indulgence should

should be intercepted by superior influence, the legislature has conferred particular advantages on persons indicted for such high treason as works a corruption of the blood, as will be noticed in an ensuing page.

When the evidence on both sides is closed, and indeed when any evidence has been given, the jury cannot be discharged (unless in cases of evident necessity) till they have given in their public verdict; they are to consider of it, and deliver it in, with the same forms, as upon civil causes. The verdict cannot be privy, but the judges may adjourn, while the jury are withdrawn to confer, and return to receive it in open court. The verdict may be either general, guilty or not guilty; or special, setting forth all the circumstances of the case, and praying the judgment of the court, whether, for instance, on the facts stated, it be murder, manslaughter, or no crime at all. This is where they doubt the matter of law, and therefore chuse to leave it to the determination of the court; though they have an unquestionable right of determining upon all the circumstances, and finding a general verdict, if they think proper; but if their verdict is notoriously wrong, they may be punished, and the verdict set aside, by attainr at the suit of the king; but not at the suit of the prisoner. If the jury find the prisoner not guilty, he is then for ever discharged of the accusation; except he be appealed of felony within the time limited by law; and on such his acquittal, or on discharge for want of prosecution, he is immediately set at large, without payment of any fee to the jailor. But if the jury find him guilty, he is then said to be convicted of the crime whereof he stands indicted. This conviction may accrue two ways; either by his confessing the offence and pleading guilty; or by his being found so by the verdict of his country.

When the offender is thus convicted, there are two collateral circumstances that immediately arise: 1. On a conviction, (or even upon an acquittal, where there was a reasonable ground to prosecute, and in fact a *bona fide* prosecution,) for any grand or petit larceny or other felony, the reasonable expences of prosecution, and also, if the prosecutor be poor, a compensation for his trouble and loss of time, are by statute 25 Geo. II. c. 36. and 18 Geo. III. c. 19. to be allowed him out of the county stock, if he petitions the judge for that purpose: and by statute 27 Geo. II. c. 3. explained by the same statute 18 Geo. III. c. 19. all persons appearing upon recognizance or *subpoena*, to give evidence, whether any indictment be preferred or no, and as well without conviction as with it, are entitled to be paid their charges, with a farther allowance (if poor) for their trouble and loss of time. 2. On a conviction of larceny in particular,

ular, the prosecutor obtains restitution of his goods, by virtue of the statute 21 Hen. VIII. c. 11. For by the common law there was no restitution on an indictment, because it was the suit of the king only; and therefore the party was obliged to bring an appeal of robbery, in order to recover his goods. But, it being considered that the party prosecuting the offender by indictment, deserves to the full as much encouragement as he who prosecutes by appeal, this statute was made, which enacts, that if any person be convicted of larceny by the evidence of the party robbed, he shall have full restitution of his money, goods, and chattels, or the value of them, out of the offender's goods, if he has any, by a writ to be granted by the justices. And the construction of this act having been in a great measure conformable to the law of appeals, it has therefore in practice superseded the use of appeals in larceny. It is now, in fact, usual for the court, on the conviction of a felon, to order (without any writ) immediate restitution of such goods as are produced, to be made to the several prosecutors; or else, secondly, without such writ of restitution, the party may peaceably retake his goods, wherever he happens to find them, unless a new property in them is fairly acquired; or, lastly, if the felon is convicted and pardoned, or is allowed his clergy, the party robbed may bring his action of trover against him for his goods; and recover a satisfaction in damages.

Such action, however, will not lie before prosecution; for so felonies would be made up and healed: and also recaption is unlawful, if done with intention to smother or compound the larceny; it then becoming the heinous offence of theft-bote.

It is not uncommon, however, when a person is convicted of a misdemeanor, which principally and more immediately affects some individual, as a battery, imprisonment, or the like, for the court to permit the defendant to speak with the prosecutor, before any judgment is pronounced; and, if the prosecutor declares himself satisfied, to inflict a trivial punishment. This is done to reimburse the prosecutor his expenses, and make him some private amends, without the trouble and circuitry of a civil action.

CRIMINAL LAW.

Having thus given an outline of the establishments for relief of the subject in cases of property, and a general view of the mode of trial by jury, it remains to describe the nature of offences against the well-being of society, which are the objects of legal vengeance, with the courts which are formed, and the persons who are empowered to administer this most important office.

CRIMES AND MISDEMEANORS. A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are synonymous terms; though, in common usage, the word "crimes" is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler names of "misdemeanors" only. The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, it is said, seems principally to consist in this, that private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties, due to the whole community, considered as a community in its social aggregate capacity.

COURTS. Before the various crimes restricted by the law of England are described, it is proposed to mention the courts which are empowered to take cognizance of them.

PARLIAMENT. The criminal jurisdiction of the high court of parliament has been already treated on at length.

COURT OF THE LORD HIGH STEWARD. The former authority, and decline of the office of lord high steward have already been noticed.

Since the office has ceased to be permanent, the court is also only occasional, being instituted for the trial of peers indicted for treason or felony, or for misprison of either. When such an indictment is therefore found by a grand jury of freeholders in the king's bench, or at the assizes before the justices of oyer and terminer, it is removed, by a writ of *certiorari*, into the court of the lord high steward, which only has the power to determine it; a high steward is then nominated *pro hac vice* only, and it has always been customary, and is considered necessary, that he should be a lord of parliament, as he else

.. would

would be incapable of sitting in judgment on a delinquent peer. The nobleman accused may plead a pardon before the court of king's bench, and the judges have power to allow it, in order to prevent the trouble of appointing an high steward, merely for the purpose of receiving such plea. But he may not plead, in that inferior court, any other plea; as guilty, or not guilty, of the indictment: but only in this court of the high steward; because, in consequence of such plea, it is impossible that judgment of death can be awarded against him. The king therefore in the commission under the great seal, which creates a lord high steward, recites the indictment so found, and gives his grace power to receive and try it, according to the law and custom of England. Then, when the indictment is regularly removed, by writ of *certiorari*, commanding the inferior court to certify it up to him, the lord high steward directs a precept to a serjeant at arms, to summon the lords to attend and try the indicted peer. This, precept was formerly issued to summon only eighteen or twenty, selected from the body of peers: then the number came to be indefinite; and the custom was, for the lord high steward to summon as many as he thought proper, (but of late years not less than twenty-three,) and that those lords only should sit upon the trial. This system threw a great power into the hands of the crown, and this its great officer, of selecting only such peers as the then predominant party should most approve of; and accordingly when the earl of Clarendon fell into disgrace with Charles II. a design was formed to prorogue the parliament, in order to try him by a select number of peers; it being doubted whether the whole house could be induced to comply with the views of the court. But now, by statute 7 W. III. c. 3. upon all trials of peers for treason or misprision, all the peers who have a right to sit and vote in parliament must be summoned, at least twenty-six days before, to appear and vote on the trial; and every lord appearing may vote, first taking the oaths of allegiance and supremacy, and subscribing the declaration against popery. During the session of parliament, the trial of an indicted peer is not properly in the court of the lord high steward, but before the court of our lord the king in parliament. It is true, a lord high steward is always appointed in that case to regulate and add weight to the proceedings: but he is rather in the nature of a speaker *pro tempore*, or chairman of the court than the judge of it: for the collective body of the peers are the judges both of law and fact, and the high steward has a vote with the rest, in right of his peerage. But in the court of the

lord high steward, which is held in the recess of parliament, he is the sole judge of matters of law, as the lords triors are in matters of fact; and as they may not interfere with him in regulating the proceedings of the court, so he has no right to intermix with them in giving any vote on the trial. Therefore, on the conviction and attainder of a peer for murder in full parliament, it has been holden by the judges, that in case the day appointed in the judgment for execution should lapse before execution done, a new day of execution may be appointed by either the high court of parliament, during its sitting, though no high steward be existing; or, in the recess of parliament, by the king's bench, the record being removed into that court.

COURT OF KING'S BENCH. This court, as already has been said, is divided into a crown side, and a plea side. On the crown side, or crown office, it takes cognizance of all criminal causes, from high treason down to the most trivial misdemeanor or breach of the peace. Into this court also indictments presented in inferior courts may be removed by writ of *certiorari*, and tried either at bar, or at *nisi prius*, by a jury of the county, out of which the indictment is brought. The judges of this court are the supreme coroners of the kingdom. And the court itself is the principal court of criminal jurisdiction, known to the laws of England. For this reason, the coming of the court of King's-Bench into any county, (as it was removed to Oxford, on account of the sickness in 1665,) at once absorbs and determines all former commissions of oyer and terminer, and general jail delivery.

COURT OF CHIVALRY. This was also a criminal court, when held before the lord high constable of England jointly, with the earl marshal, but it is now fallen into disuse.

COURT OF ADMIRALTY. The high court of admiralty, held before the lord high admiral of England or his deputy, styled the judge of the admiralty, is not only a court of civil, but also of criminal jurisdiction. This court has cognizance of all crimes and offences committed either on the sea, or on the coasts, out of the body, or extent of any English county; and by statute 15 Ric. II. c. 3. of death and mayhem happening in great ships, being and hovering in the main stream below the bridges, which are then a sort of ports or havens; such as are the ports of London and Gloucester, though they lie at a great distance from the sea. But, as this court proceeded without jury, in a method much conformed to the civil law, the exercise of a criminal jurisdiction there was contrary to the genius of the law of England; in so much as

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a man might there be deprived of his life, by the opinion of a single judge, without the verdict of his peers. And, besides, as innocent persons might thus fall a sacrifice to the caprice of a single man, so gross offenders might, and did frequently, escape punishment: for the rule of the civil law is that no judgment of death can be given against offenders, without proof by two witnesses, or a confession of the fact by themselves. This was always a great offence to the English nation: and therefore in the eighth year of Henry VI., it was endeavoured to apply a remedy in parliament: which then miscarried for want of the royal assent. However, by the statute 28 Hen. VIII. c. 15. it is enacted, "that all felonies and robberies, &c. upon the sea, or in any haven, river, creek, or place, where the admiral or admirals have, or pretend to have, power, authority or jurisdiction, shall be inquired, tried, heard, determined, and judged, in such shires and places in the realm, as shall be limited by the king's commission to be directed for the same, in like form and condition, as if any such offences had been committed on the land; and such commissions shall be had under the king's great seal, directed to the admiral or admirals, or to his or their lieutenant, deputy or deputies, and to three or four such other substantial persons as shall be named or appointed by the lord chancellor of England, as need shall require, to hear and determine such offences after the common course of the law, used for felonies committed on the land. And such order, process, judgment, and execution shall be used against such persons, as against felons on the land; and such as shall be convicted of any such offence, by verdict, confession, or process, by authority of any such commission, shall suffer such pains of death, losses of lands, goods, and chattels, as if they had been attainted and convicted of such offence on the land; and also, that they shall be excluded from the benefit of the clergy." As this statute did not extend to accessaries, the defect was remedied by some subsequent acts. By 1 Anne, sess. 2. cap. 9. captains and mariners belonging to ships, and destroying the same at sea, are to be tried in such places as shall be limited by the king's commission, and according to 28 Hen. VIII. cap. 15.; and by 4 Geo. I. cap. 11. all persons, who shall commit any offence for which they ought to be adjudged pirates, felons, or robbers, by 11 & 12 Will. III. cap. 5. may be tried and judged for every such offence according to the form of 28 Hen. VIII. cap. 15. and shall be excluded from their clergy. Indictments for these offences are found by a grand jury, and afterwards tried by a petty jury. The judge of the admiralty still presides in this court, as the

lord mayor is the president of the session of oyer and terminer in London.

COURTS OF OYER AND TERMINER AND GENERAL JAIL DELIVERY. These courts are held before the king's commissioners, among whom are usually two judges of the courts at Westminster, twice in every year, in every county of the kingdom; except the four northern ones, where they are held only once, and London and Middlesex, wherein they are held eight times. It has already been observed, that at what is usually called the assizes, the judges sit by virtue of five several authorities. By virtue of the commission of assize and its attendant jurisdiction of *nisi prius*, the justices exercise their power in civil causes; they have also, by virtue of several statutes, a criminal jurisdiction in certain special cases. Their commission of the peace gives them authority over the justices of the peace residing in the county, who are bound by law to attend them, or else are liable to a fine; in order to return recognizances, &c. and to assist the judges in such matters as lie within their knowledge and jurisdiction, and in which some of them have probably been concerned, by way of previous examination. The fourth authority is the commission of oyer and terminer, to hear and determine all treasons, felonies, and misdemeanors. This is directed to the judges and several others, or any two of them; but the judges, or serjeants at law, only are of the quorum, so that the rest cannot act without the presence of one of them. The words of the commission are, "to inquire, hear, and determine:" so that, by virtue of it, they can only proceed upon an indictment found at the same assizes; for they must first inquire, by means of the grand jury or inquest, before they are empowered to hear and determine by the help of the petit jury. Therefore they have besides, fifthly, a commission of general jail delivery; which empowers them to try and deliver every prisoner, who shall be in the jail when they arrive at the circuit town, whenever or before whomsoever indicted, or for whatever crime committed. It was anciently the course to issue special writs of jail delivery for each particular prisoner, which were called the writs *de bono et malo*: but these being found inconvenient and oppressive, a general commission for all the prisoners has long been established in their stead. Thus the jails are, in general, cleared, and all offenders tried, punished or delivered, twice in every year: a constitution of singular use and excellence. Sometimes, also, upon urgent occasions, the king issues a special or extraordinary commission of oyer and terminer, and jail delivery, confined to those offences which stand in need of immediate inquiry and punishment: upon which

which the course of proceeding is much the same as on general and ordinary commissions. Formerly it was held, in pursuance of the statutes 8 Ric. II. c. 2. and 33 Hen. VIII. c. 4. that no judge or other lawyer could act in the commission of oyer and terminer, or in that of jail delivery, within his own county, where he was born or inhabited; in like manner as they are prohibited from being judges of assize and determining civil causes. But that local partiality, which the jealousy of our ancestors was careful to prevent, being judged less likely to operate in the trial of crimes and misdemeanors, than in matters of property and disputes between party and party, it was thought proper, by the statute 12 Geo. II. c. 27. to allow any man to be a justice of oyer and terminer and general jail delivery within any county of England.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE. This court must be held in every county once in every quarter of a year; which by a statute 2 Hen. V. c. 4. is appointed to be in the first week after the Epiphany; the first week after the close of Easter; and in the week after the translation of St. Thomas the Martyr, or the seventh of July. It is held before two or more justices of the peace, one of whom must be of the quorum. The jurisdiction of this court, by statute 34 Edw. III. c. 1. extends to the trying and determining all felonies and trespasses whatsoever: though they seldom, if ever, try any greater offence than small felonies within the benefit of clergy; their commission providing, that, if any case of difficulty arises, they shall not proceed to judgment, but in the presence of one of the justices of the court of king's bench or common pleas, or one of the judges of assize; and therefore murders, and other capital felonies, are usually remitted for a more solemn trial to the assizes. They cannot also try any new created offence, without express power given them by the statute which creates it. But there are many offences, and particular matters, which, by particular statutes, belong properly to this jurisdiction, and ought to be prosecuted in this court: as, the smaller misdemeanors, against the public or common wealth, not amounting to felony; and especially offences relating to the game, highways, ale-houses, bastard children, the settlement and provision for the poor, vagrants, servants wages, apprentices, and popish recusants. Some of these are proceeded upon by indictment; and others in a summary way by motion and order thereupon; which order may, for the most part, unless guarded against by particular statutes, be removed into the court of king's bench, by writ of *certiorari facias*, and be there either quashed or confirmed. The records or rolls of the sessions are committed

to the custody of a special officer denominated the *custos rotularum*. In most corporation towns there are quarter-sessions kept before justices of their own, within their respective limits: which have exactly the same authority as the general quarter-sessions of the county, except in a very few instances: one of the most considerable of which is the matter of appeals from orders of removal of the poor, which, though they be from the orders of corporation justices, must be to the sessions of the county, by statute 8 and 9 Will. III. c. 30. In both corporations and counties at large, there is sometimes kept a special or *petty session*, by a few justices, for dispatching smaller business in the neighbourhood between the times of the general sessions; as, for licensing ale-houses, passing the accounts of the parish officers, and the like.

THE SHERIFF'S TOURN. The sheriffs tourn or rotation, is a court of record, held twice every year within a month after Easter and Michaelmas, before the sheriff, in different parts of the county; being indeed only the turn of the sheriffs to keep a court-leet of the county, as the county court is the court baron: for out of this, for the ease of the sheriffs, was taken,

THE COURT-LEET, OR VIEW OF FRANKPLEDGE, which is a court of record, held once in the year, and not oftener, within a particular hundred, lordship, or manor, before the steward of the leet: being the king's court granted by charter to the lords of those hundreds or manors. Its original intent was to view the frank pledges, that is, the freemen within the liberty; who, according to the institution of the great Alfred, were all mutually pledges for the good behaviour of each other. Besides this, the preservation of the peace, and the chastisement of divers minute offences against the public good, are the objects both of the court-leet and the sheriffs tourn. All freeholders within the precinct are obliged to attend them, and all persons commorant therein; which commorancy consists in usually lying there: a regulation, which owes its original to the laws of Canute. But persons under twelve and above sixty years old, peers, clergymen, women, and the king's tenants in ancient demesne, are excused from attendance: all others being bound to appear upon the jury, if required, and make their due presentments. It was also anciently the custom to summon all the king's subjects, as they respectively grew to years of discretion and strength, to come to the court-leet, and there take the oath of allegiance to the king. The other general business of the leet and tourn, was to present by jury all crimes whatsoever that happened within their jurisdiction; and not only to present, but also to punish, all misdemeanors, as all trivial debts were

were recoverable in the court-baron, and county court; justice, in these minuter matters of both kinds, being brought home to the doors of every man by our ancient constitution. These courts have, however, long been in a declining state, their business having for the most part devolved on the sessions.

COURT OF THE CORONERS. The court of the coroners is also a court of record, to inquire, when any one dies in prison, or by a violent or sudden death, by what manner he came to his end. And this can only be done on view of the body.

COURT OF THE CLERK OF THE MARKET. The court of the clerk of the market is incident to every fair and market in the kingdom, to punish misdemeanors therein, as a court of *pie poudre* is to determine all disputes relating to private or civil property. The object of this jurisdiction is principally the recognizance of weights and measures, to try whether they are according to the true standard, or no; which standard was anciently committed to the custody of the bishop, who appointed some clerk under him to inspect abuses, and hence this officer, though now usually a layman, is called the *clerk* of the market. If they are not according to the standard, then, besides the punishment of the party by fine, the weights and measures themselves ought to be burnt. This is the most inferior court of criminal jurisdiction in the kingdom.

COURTS OF THE ROYAL HOUSEHOLD. These are two local courts established by statute, and although now never heard of, yet not abolished. The first is the *court of the lord steward, treasurer, or comptroller of the king's household*, which was instituted by statute 3 Hen. VII. c. 14., to inquire of felony by any of the king's sworn servants, in the cheque roll of the household, under the degree of a lord, in confederating, compassing, conspiring, and imagining the death or destruction of the king, or any lord or other of his majesty's privy-council, or the lord steward, treasurer, or comptroller of the king's house. The inquiry, and trial thereupon, must be by a jury according to the course of the common law, consisting of twelve sad men, (that is, sober and discreet persons) of the king's household. The other is the court of the *lord steward of the king's household*, or in his absence, of the treasurer, comptroller, and steward of the Marshalsea, which was erected by 33 Hen. VIII. c. 12., with a jurisdiction to inquire of, hear, and determine, all treasons, misprisions of treason, murders, manslughters, bloodshed, and other malicious strikings, whereby blood is shed in, or within the limits, (that is within two hundred feet of the gate) of any of the palaces and houses of the king, or any other house where he abides. The proceedings are also by a grand and petit jury, as at common law, taken out of officers and sworn servants of the

the king's household. The form and solemnity of the process, particularly with regard to the execution of sentence by cutting off the hand, which is part of the punishment for shedding blood in the king's court, are very minutely set forth in the said statute 33 Hen. VIII., and the several offices of the servants of the household in and about such execution are described, from the serjeant of the wood-yard, who furnishes the chopping block, to the serjeant farrier, who brings hot irons to sear the stump.

COURT OF THE UNIVERSITIES. The chancellor's court has authority to determine all cases of property, wherein a privileged person is one of the parties, except causes of freehold; and also all criminal offences or misdemeanors under the degree of treason, felony, or mayhem. The trial of these latter offences is by a particular charter committed to the university jurisdiction, the court of the lord high steward of the university. If an indictment is found in any of the king's courts against a scholar or privileged person, he is to be tried before the high steward of the university, or his deputy, who is to be nominated by the chancellor of the university for the time being. But when his office is called into action, he must be approved by the lord high chancellor of England; and a special commission under the great seal is given to him, and others, to try the indictment then depending, according to the law of the land and the privileges of the university; but this can only be done when the cognizance is claimed by the vice-chancellor. If the offence be *inter minora crimina*, or a misdemeanor only, it is tried in the chancellor's court by the ordinary judge; but if it be for treason, felony, or mayhem, it is then, and then only, to be determined before the lord high steward, under the king's special commission. The process of the trial is this: The high steward issues one precept to the sheriff of the county, who returns a panel of eighteen freeholders; and another precept to the bedells of the university, who return a panel of eighteen matriculated laymen, "*laicos privilegio universitatis gaudentes*:" and by a jury formed *de medietate*, half of freeholders, and half of matriculated persons, is the indictment to be tried. And if it is necessary to award execution in consequence of finding the party guilty, the sheriff of the county must execute the university process; to which he is annually bound by oath.

JUSTICES OF THE PEACE. In aid of these courts subordinate magistrates are appointed under the name of justices of the peace. The common law has ever had a special care and regard for the conservation of the peace; for peace is the very end and foundation of civil society. And therefore, before the present constitution of justices was invented, there were peculiar

liar officers appointed by the common law for the maintenance of the public peace. Of those some had, and still have, this power annexed to other offices which they hold; others had it merely by itself, and were thence named *custodes* or *conservatores pacis*. Those that were so by virtue of office still continue; but the latter sort are superseded by the modern justices.

The king is, by his office and dignity royal, the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the king's peace. The lord chancellor or keeper, the lord treasurer, the lord high steward of England, the lord marshal, the lord high constable of England, (when any such officers are in being) and all the justices of the court of king's bench (by virtue of their offices), and the master of the rolls (by prescription), are generally conservators of the peace throughout the whole kingdom, and may commit all breakers of it, or bind them in recognizances to keep it; the other judges are only so in their own courts. The coroner is also a conservator of the peace within his own county; as is also the sheriff; and both of them may take a recognizance or security for the peace. Constables, tything-men, and the like, are also conservators of the peace within their own jurisdictions; and may apprehend all breakers of the peace, and commit them, till they find sureties for keeping it.

Those that were, without any office, simply and merely conservators of the peace, either claimed that power by prescription, or were bound to exercise it by the tenure of their lands; or, lastly, were chosen by the freeholders in full county court, before the sheriff; the writ for their election directing them to be chosen from among the most honest and powerful men in the county, for preservation of the peace. But when Isabel, the wife of Edward II., had contrived to depose her husband, by a forced resignation of the crown, and had set up his son, Edward III. in his place, this, being a thing then without example in England, it was feared would much alarm the people; especially as the old king was living, though hurried about from castle to castle, till at last he met with an untimely death. To prevent, therefore, any risings, or other disturbances of the peace, the new king sent writs to all the sheriffs in England, the form of which is preserved by Thomas Walsingham, giving a plausible account of the manner of his obtaining the crown; namely, that it was done with the good liking of his father himself; commanding each sheriff that the peace be kept throughout his bailiwick, on pain and peril of disinheritation, and loss of life and limb. In a few weeks after the date of these writs, it was ordained in parliament, that, for the better maintaining

maintaining and keeping the peace in every county, good men and lawful, which were no maintainers of evil, or barretors in the county, should be assigned to keep the peace; and in this manner, and upon this occasion, was the election of the conservators of the peace taken from the people, and given to the king: Still they were only called conservators, wardens, or keepers of the peace, till the statute of Edward III. c. 1. gave them the power of trying felons; and they then acquired the more honourable appellation of justices.

These justices are appointed by the king's special commission under the great seal, the form of which was settled by all the judges in 1590. It appoints them all jointly and severally, to keep the peace, and any two or more of them to inquire of, and determine, felonies, and other misdemeanors: in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence, the words of the commission running thus, "*quorum aliquem vestrum, A. B. C. D. &c., unum esse volumus;*" whence each person so named is usually called a justice of *quorum*. Formerly it was customary to appoint only a select number of justices, eminent for their skill and discretion, to be of the quorum; but now the practice is to advance almost all to that dignity, naming them all over again in the quorum clause, except perhaps some one inconsiderable person for the sake of propriety; and no exception is now allowable, for not expressing in the forms of warrants, &c. that the justices who issued them are of the quorum. When any justice intends to act under this commission, he sues out a writ of *dedimus potestatem*, from the clerk of the crown in chancery, empowering certain persons therein named to administer the usual oaths to him; which, when he has taken, he is at liberty to act.

Touching the number and qualifications of these justices, it was ordained by statute 18 Edw. III. c. 2., that two, or three, of the best reputation in each county, shall be assigned to be keepers of the peace; but these being found too few, it was provided by 34 Edward III. c. 1., that one lord, and three or four of the most worthy men, with some learned in the law, should be made justices in every county. Afterwards the number of justices, through the ambition of private persons, became so large, that it was thought necessary by statute 12 Ric. II. c. 10., and 14 Ric. II. c. 11. to restrain them at first to six, and afterwards to eight only; but this rule is now disregarded, and the cause seems to be, that the growing number of statute laws, committed from time to time to the charge of justices of the peace, has occasioned also (and very reasonably) their increase to a larger number. As to their qualifications,

tations, the statutes last cited direct that they shall be of the best reputation, and most worthy men in the county; and the 13 Ric. II. c. 7. orders them to be of the most sufficient knights, esquires, and gentlemen of the law; also by statute 2 Hen. V. st. 1. c. 4., and st. 2. c. 1., they must be resident in their several counties. At length, because contrary to these statutes, men of small substance had crept into the commission, whose poverty made them both covetous and contemptible, it was enacted by 18 Hen. VI. c. 11. that no justice should be put into commission, if he had not lands to the value of 20*l.* per annum; but, the rate of money being greatly altered since that time, it is enacted by 5 Geo. II. c. 18., that every justice, except as is therein excepted, shall have 100*l.* per annum, clear of all deductions; and, if he acts without such qualification, he shall forfeit one hundred pounds. This qualification is almost equivalent to the 20*l.* per annum required in Henry the Sixth's time; and of this the justice must now make oath. Also it is provided by the act 5 Geo. II. that no practising attorney, solicitor, or proctor, shall be capable of acting as a justice of the peace.

As the office of these justices is conferred by the king, so it subsists only during his pleasure; and is determinable, 1. By demise of the crown, that is, in six months after; but if the same justice is put in commission by the successor, he is not obliged to sue out a new *dedimus*, or swear to his qualification afresh: nor by reason of any new commission, to take the oaths more than once in the same reign. 2. By express writ under the great seal, discharging any particular person from being any longer a justice. 3. By superseding the commission by writ of *superfedeas*, which suspends the power of all the justices, but does not totally destroy it, since it may be revived by another writ called a *procedendo*. 4. By a new commission, which virtually, though silently, discharges all the former justices not included in it; for two commissions cannot subsist at once. 5. By accession to the office of sheriff or coroner; that is to say, he cannot act as a justice of the peace during the year he is sheriff; but it is not equally clear that the election of a man as coroner disqualifies him to be a justice. Formerly it was thought, that if a man was named in any commission of the peace, and had afterwards a new dignity conferred on him, his office was determined, he no longer answering the description of the commission; but now it is provided that, notwithstanding a new title of dignity, the justice on whom it is conferred shall still continue a justice.

The power, office, and duty of a justice of peace depend

on his commission, and on the several statutes which have created objects of his jurisdiction. His commission, first, empowers him singly to conserve the peace, and thereby gives him all the power of the ancient conservators at the common law, in suppressing riots and affrays, in taking securities for the peace, and in apprehending and committing felons and other inferior criminals. It also empowers any two or more to hear and determine all felonies and other offences, which is the ground of their jurisdiction at sessions, of which mention has been made.

When two or more justices are by statute obliged to concur in any act, as the appointment of overseers, and various others, both justices must be present and do the act together. As the poor laws, the revenue laws, and many other branches of the administration of justice have thrown a vast additional power as well as a great accumulation of business into the hands of these magistrates, it is usual to allow an appeal from their summary proceeding to the general or quarter sessions, where the case can be more solemnly argued, and sometimes to the commissioners of the customs or excise. The power of a justice of the peace to convict an offender in a summary way, without a trial by jury, it is observed, is in restraint of common law, and in abundance of instances a tacit repeal of that famous clause in the great charter, that a man shall be tried by his equals; which also was the common law of the land, long before the great charter, even for time immemorial, beyond the date of histories and records. Therefore generally nothing is presumed in favour of this branch of the office of a justice; but the intendment will be against it; for which reason, where this special power is given to a justice by act of parliament, it must appear that he has strictly pursued it; otherwise the common law will break in upon him, and level all his proceedings. So that where a trial by jury is dispensed with, yet he must proceed according to the course of the common law in trials by juries, and consider himself only as constituted in the place both of judge and jury. Therefore there must be an information or charge against a person; then he must be summoned or have notice of such charge, and an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the statute specially directs otherwise; then, if the person is found guilty, there must be a conviction, judgment, and execution, all according to the course of the common law, directed and influenced by the special authority given by statute; and in conclusion, there must be a record of the whole proceedings, wherein the justice must set forth the particular manner and circumstances, so as
if

if he shall be called to an account for the same by a superior court, it may appear he has conformed to the law, and not exceeded the bounds prescribed to his jurisdiction.

LORD LIEUTENANT AND CUSTOS ROTULORUM. The office of lord lieutenant is purely military, he being the principal person empowered to regulate the militia in his county; but to the appointment of lord lieutenant is commonly joined that of *custos rotulorum*, in virtue of which he presides over all the justices of the peace in the county, and new ones are in general put into commission on his recommendation. He is nominated by the king's sign manual.

CLERK OF THE PEACE. By statute 37 Hen. VIII. c. 1. and 1 Will. c. 21. the *custos rotulorum* shall appoint an able and sufficient person residing in the county or division, to execute the office of clerk of the peace, by himself or his sufficient deputy, (to be allowed of by the said *custos rotulorum*) and to take and receive the fees, profits, and perquisites thereof, for so long time only as such clerk of the peace shall well demean himself in his office. But the *custos rotulorum* must not sell the place of clerk of the peace, or directly or indirectly take any reward, or assurance of reward, fee, or profit, for such appointment, on pain that the seller and buyer shall be disabled to hold their respective places, and each forfeit double value of the thing given, to him who shall sue. The clerk of the peace takes an oath that he has not gained his appointment by corruption, and those of allegiance and supremacy. He draws ordinary indictments for felony, for which his fee is only two shillings, and if defective, he must prepare new ones gratis; he makes certain returns of fines, forfeitures, outlawries, convictions, and attainments, to the court of king's bench, and to the sheriffs; and he delivers into the court of exchequer an account of all estreats, which he verifies on oath. He keeps a public office in the county, and his duties are very extensive in all affairs transacted at the sessions. Neither clerk of the peace, nor his deputy can act as solicitor, attorney, or agent, or sue out any process at any general or quarter sessions, where he shall execute the office of the clerk of the peace or deputy, on pain of 50*l.* to him who shall sue in twelve months, with treble costs.

CONSTABLES. Constables are of two sorts, high and petty. The former were first ordained by the statute of Winchester; are appointed at the court-leets of the franchise or hundred over which they preside, or, in default of that, by the justices at the quarter sessions; and are removable by the same authority that appoints them. The petty constables are inferior officers in every town and parish, subordinate to the high constable

ble of the hundred, first instituted about the reign of Edward III. These petty constables have two offices united in them; the one ancient, the other modern. Their ancient office is that of headborough, tything-man, or borsholder; and these are as ancient as the time of Alfred; their more modern office is that of constable merely; which was appointed so lately as the reign of Edward III., in order to assist the high constable; and in general the ancient headboroughs, tything-men, and borsholders, were made use of to serve as petty constables; though not so generally, but that in many places they still continue distinct officers. They are all chosen by the jury at the court-leet; or if no court-leet be held, are appointed by two justices of the peace.

QUALIFICATIONS AND EXEMPTIONS. No person is qualified to be a constable who is not an inhabitant of the place for which he is to serve; and every inhabitant may not be a fit person to be appointed to this office, for he ought to be of the abler sort of parishioners; and if a very ignorant or poor person is chosen, he may by law be discharged, and an abler appointed in his room. The persons exempt from serving the office of constable are, the president, commons, and fellows of the faculty of physicians and surgeons, in London; apothecaries in London, and within seven miles, being free of the company of apothecaries; and also those in the country who have served seven years apprenticeship; a sworn attorney, or other officer, of the courts at Westminster may have a writ of privilege for his discharge, by reason of his necessary attendance in those courts; and upon the like reasons, it is taken for granted, that practising barristers at law, and the servants of members of parliament, have the same privilege; an alderman of London, for the like reasons, is not compellable to be a constable; but it has been holden, that a captain of the king's guards, being presented to serve as constable, in pursuance of a custom in respect of his lands in a town, cannot claim this privilege, although he is bound by his office to personal attendance on the king; yet such office being of late institution, cannot prevail against an ancient custom. Yet if such an officer as before mentioned, or a gentleman of quality, who has no such office, or a practising physician, were chosen constable of a town which has sufficient persons besides to execute the office, and no special custom concerning it, perhaps he might be relieved by the king's bench; but it seems that even a custom cannot exempt fit persons from serving the office, where there are not others sufficient to execute it. These points seem not to be entirely settled; but no serjeant, corporal, nor private man, serving in the militia, is, during the time, liable to be a constable.

constable; every teacher or preacher in holy orders, or pretended holy orders, in a congregation tolerated by law, is, from the time of his subscription and taking the oaths, exempted. As the office of a constable is wholly ministerial, and no way judicial, it seems he may appoint a deputy to execute a warrant directed to him, when, by reason of sickness, absence, or for any other cause, he cannot do it himself; yet it does not seem to be settled, that a constable can make a deputy without some special reason; but by 1 Wm. c. 18. and 31 Geo. III. c. 32. persons dissenting from the church of England, and having scruples in regard of the oaths, or any other matter required to be done in respect of such office, and also Roman Catholics, may execute it by a sufficient deputy.

DUTY. Every high and petty constable is, by the common law, a conservator of the peace; and therefore if any man makes an affray or assault upon another in presence of the constable, or threatens to kill, beats, or hurts another, or is in a fury ready to break the peace; the constable may commit him to the stocks, or other safe custody for the present, and may afterward carry him before a justice, or to jail, until he find surety for the peace, which surety the constable himself may also take by obligation, to be sealed and delivered to the king's use; and if the party will not find surety, the constable may imprison him until he shall do it. But this is only where he personally sees the affray; for he has no authority to bind over any man on the deposition of another. The constable is the proper officer to a justice of the peace, and bound to execute his warrants; and therefore it has been resolved, that where a statute authorizes a justice to convict a man of a crime, and levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper officer to serve, and indictable for disobeying. And by statute 33 Geo. II. c. 55: two justices in special or petty sessions may fine a constable or parish officer neglecting or refusing to execute any lawful warrant in forty shillings, and for want of distress, commit him to the house of correction for ten days. The law protects constables in execution of their duty, and all persons assisting them, against malicious prosecutions. If the constable is assaulted in the execution of his office, he need not go back to the wall, as private persons ought to do: and if in striving together, he kills the assailant, it is no felony; but if the constable is killed, it is construed premeditated murder.

OFFENCES AGAINST RELIGION, MORALITY, AND THE CHURCH ESTABLISHMENT. The offences included in this description being for the most part the subjects of ecclesiastical

animadversion, have been already noticed, Vol. I. p. 416 et seqq. under the respective titles of *simony*, *blasphemy and profaneness*; *apostacy*; *heresy*; *impostures and pretended prophecies*; *witchcraft and sorcery*; and *sabbath-breaking*; and afterward in treating of the test acts, and the laws relative to dissenters and papists. To what was there said it is not necessary here to make any addition.

HIGH TREASON. This crime divides itself into two general heads; namely of offences immediately against the allegiance due to the king; and those relating to the coin and bullion. The first of these divisions is first to be noticed, and is most generally considered exclusively in speaking of high treason.

In this sense, high treason is defined to be a violation of the allegiance which is due from the subject to the king, as sovereign lord and supreme magistrate of the state. It is the greatest crime against faith, duty, and human society, and brings with it the most fatal dangers to the government, peace and happiness of the nation; and therefore this offence, which includes felony, subjects those who are convicted of it, to the greatest ignominy and punishment. It is distinguishable from sedition, which is now understood in a more general sense, as extending to other offences, not capital, of like tendency, but without any actual design against the king in contemplation; such as contempts against his person and government, riotous assemblies for political purposes and the like. But all such contempts, though not amounting to high treason, are highly criminal, and punishable with fine, imprisonment, and sometimes with the pillory. A second offence of this sort was, by a late temporary act, made punishable with transportation: but that statute is expired.

OF ALLEGIANCE. Allegiance is that obedience and fidelity which every person, under the protection of the laws and government, owes, in return for that protection, to the person of the king, as supreme head of the state, and dispenser of those laws and that government. It is the tie which binds every subject to be true and faithful to his sovereign liege lord the king, and truth and faith to bear of life and limb, and earthly honour; and not to know or hear of any ill intended him without defending him therefrom. This duty of allegiance also binds all persons to serve the king faithfully and diligently in their several stations; to assist him with their advice when called upon; and to serve him in their persons, if able, in defence of the realm, against rebels and foreign invaders: and they are indictable as for a high misdemeanor for the wilful neglect or refusal of any of these their bounden duties. The
same

same duty obliges every subject beyond sea to return on the king's letters for that purpose, or to refrain from going abroad, on the king's pleasure so expressed, either by the writ of *ne exeat regnum*, or under the great or privy seal or signet, or by proclamation; for the contempt of which he is indictable at common law, and his lands may be seized till his return. And inasmuch as the duties and obligations of the king towards his subjects arise from the moment he is invested with the regal character, and antecedent to his coronation oath, which is only a more solemn recognition of those inherent obligations; so there is an original, implied, and virtual allegiance which the subject owes to the sovereign, antecedent to any express oath or engagement to that effect; for the breach of which, at an age of discretion, he is amenable to justice.

Allegiance is distinguished into natural and local.

Natural Allegiance is that which is due from every man who is born a member of society. His birth in the state intitles him to peculiar privileges, which are, with great propriety, called his birth-right; and this being indefeasible, the allegiance arising out of it is equally unalienable: it is due from him at all times and in all places; and hence the maxim, that no man can renounce his country. It is not in the power of any subject to shake off his allegiance, or transfer it to any foreign prince: nor can any foreign prince, by employing a British subject, dissolve the bond of allegiance between him and the crown. Allegiance is due as well from the husband of a queen regnant to her, as from a queen consort to the king; and it is a high contempt at common law, to refuse the oath of allegiance, which all laymen above the age of twelve years are bound to take at the tourn or court-leet, and which has already been mentioned as an indispensable qualification for many situations, ecclesiastical, civil, and military.

Local Allegiance is that which is due from a foreigner during his residence here; and is founded in the protection he enjoys for his own person, his family, and effects, during the time of that residence. This allegiance ceases whenever he withdraws with his family and effects; for his temporary protection being then at an end, the duty arising from it also determines; but if he only go abroad himself, leaving his family and effects here, under the same protection, the duty still continues, and if he commit treason, he may be punished as a traitor: and this whether his own sovereign is at enmity, or at peace with ours; and if he aid even his own countrymen, in acts or purposes of hostility, while he is resident here, he may be dealt with in the same manner. The case of an ambassador is not meant to be included in the foregoing observations: the exception,

if any, is grounded on principles of policy, and not of justice; but an alien enemy not domiciled here, taken in avowed hostilities against the king or his government, is no traitor, though leagued with rebels; for he violates no trust or allegiance.

A prince or princess succeeding to the crown by descent, or by the previous designation of parliament, is, from the moment the title accrues, a king to all intents and purposes antecedent to the coronation, which does not confer but presupposes a right. But a titular king, as the husband of a queen regnant, is not within the law, but himself owes allegiance to the queen. It is also agreed that a king *de facto*, in the full and sole possession of the crown, is a king within the same statute of Edward III.; and that any other person out of possession is no such king, be his pretensions what they may.

WHAT ACTS AMOUNT TO HIGH TREASON, AND WHAT TO A LE-S OFFENCE. The acts which amount to high treason are specified in several declaratory and enacting statutes. The first and principal of these is the 25 Edw. III. st. 5. c. 2. emphatically called the statute of treasons, because it reduced and settled all treasons, which were before very indefinite and often stretched by arbitrary constructions, to certain specific heads. It is thereby declared to be high treason; "when a man
" does compass or imagine the death of the king, or of his
" queen, or of their eldest son and heir; or if a man do violate
" the king's companion, or the king's eldest daughter unmarried;
" or the wife of the king's eldest son and heir; or if a
" man do levy war against the king in his realm, or be adherent
" to his enemies in his realm, giving to them aid and comfort
" in the realm or elsewhere; and thereof be proveably (*i. e.* upon
" sufficient proof) attainted of open deed by the people of their
" condition; and if a man counterfeit the king's great or privy
" seal or his money; and if a man bring false money into this
" realm, counterfeit to the money of England, as the money called
" Lushburgh, or other like to the said money of England,
" knowing the money to be false, to merchandize or make pay-
" ment, in deceit of the king and his people; and if a man
" slay the chancellor, treasurer, or the king's justices of the
" one bench or the other, justices in eyre, or justices of assize,
" and all other justices assigned to hear and determine, being in
" their places doing their offices." The statute afterwards proceeds to give this salutary caution, "that because many
" other like cases of treason may happen in time to come,
" which a man cannot think nor declare at this present time, it
" is accorded, that if any other case supposed treason, which is
" not above specified, does happen before any justices, the
" justices

“ justices shall tarry, without any going to judgment of the
 “ treason, till the cause be shewed and declared, before the
 “ king and his parliament, whether it ought to be judged trea-
 “ son or other felony.”

This statute was reinforced and again made the only standard of treason by the 1 Mar. st. 1. c. 1., which abrogated all intermediate acts creating new treasons, or misprisions of treasons : but since that time, other treasons have been added by various statutes ; of these it is only necessary to set forth the last in this place, reserving the rest for incidental mention. By statute 3Q Geo. III. c. 7. “ if any person, during the natural life of the
 “ king, and until the end of the next session of parliament after
 “ a demise of the crown, shall, within the realm or without,
 “ compass, imagine, invent, devise, or intend death or destruc-
 “ tion, or any bodily harm tending to death or destruction,
 “ maim, or wounding, imprisonment or restraint, of the person
 “ of the king, his heirs or successors, or to deprive or depose
 “ him or them from the style, honour, or kingly name of the
 “ imperial crown of this realm, or of any other of his majesty’s
 “ dominions or countries ; or to levy war against his majesty,
 “ his heirs or successors, within this realm, in order by force or
 “ constraint to compel him or them to change his or their
 “ measures or counsels, or in order to put any force or con-
 “ straint upon, or to intimidate or overawe, both or either
 “ houses of parliament ; or to move or stir any foreigner or
 “ stranger with force to invade this realm, or any other his
 “ majesty’s dominions or countries, under the obedience of his
 “ majesty, his heirs and successors ; and such compassings,
 “ imaginations, inventions, devices, or intentions, or any of
 “ them, shall express, utter, or declare, by publishing any
 “ print’g ; or writing, or by any overt act or deed ; being le-
 “ gally convicted thereof, upon oaths of two lawful and credible
 “ witnesses, upon trial ; or otherwise convicted, or attainted by
 “ due course of law, then every such offender shall be deemed,
 “ declared, and adjudged to be a traitor.” By 1. 5. the bene-
 fit of the acts of the 7 W. III. c. 3. and 7 Anne, c. 11. as to the
 trial, is reserved.

By the act of union with Scotland, high treason, or misprision of treason in England, and none else, shall be high treason in Scotland. Such a provision was not necessary in the case of Ireland, which had the same general laws as Great Britain before its union with it ; and therefore the eighth article of the union with Ireland only provides that all the laws in force, at the time of the union, in either country respectively, shall remain, unless afterwards altered.

On each of the heads of treason some few observations will

be made, but the whole system of law is too large to be even abridged in this work.

Compassing or Imagining the Death of the King. In this species of treason the old rule, which prevailed in all cases of homicide, *quod voluntas reputabitur pro facto*, applies in its full extent. A mere imagination of the heart, if any open or overt act be done towards effectuating the design, is deemed the same degree of guilt as if carried into actual execution.

The first set of overt acts by which this degree of the crime is proved, is where the life of the sovereign is immediately and intentionally aimed at; the providing weapons, ammunition, or any other means of accomplishing or procuring his death, in order to effectuate that intent, or the sending letters, or assembling for that purpose, is evidence of high treason under this branch of the statute. A bare consulting with others how to kill the king, though nothing else be done, and though the conspirators do not then determine upon any scheme for that purpose, or do not agree in their resolution, is an overt act of the same treason. If a person be present at only one such consultation, and conceal it, having had a previous knowledge of the design of the meeting, it is evidence to be left to a jury of his assent to the design, though he neither did nor said any thing at such consultation; but if he had no such previous knowledge, as if he fell into the company by accident or upon some indifferent occasion, a bare concealment without an express assent is only misprision of treason. If he be present at more than one such consultation, and do not dissent or make a discovery, it is strong evidence of assent; and an assent to any overtures for that purpose is a plain overt act of compassing the king's death, in like manner as any advice, persuasion, or command, to incite, encourage, or procure others to make an attempt against his person.

The next head of overt acts of the same species of treason relates to deposing or taking possession of the king's person, which the common experience of all times and nations has shewn to be the most probable prelude to his death. And therefore it is held that the construction of this species of treason extends to every wilful and deliberate act or attempt whereby the king's person may probably be endangered, or such as cannot be executed without the apparent peril to him. Accordingly, entering into measures for deposing or imprisoning him, or for forcibly taking his person into the power of the conspirators, or to compel him by force to yield to certain demands, or to remove evil counsellors, and all such other notorious acts, done or conspired to be done against his person

son or regal government, may be alleged as overt acts of compassing his death : they have a manifest tendency to that fatal issue.

Compassing the Death of the Queen or their eldest Son and Heir. The queen means the queen consort or wife of the king, and extends to a wife *de facto* during the coverture, but after a divorce, though it be only *a mensâ et thoro*, she is not within the statute ; nor is a queen dowager. Their eldest son and heir extends to a second-born son, after the death of the elder, and the like of the rest ; and notwithstanding the king should have married a second wife, and so the son should not be *their* eldest son, but only the king's son. In like manner the eldest son of a queen regnant is within the act.

Violating the King's Companion, his eldest Daughter unmarried, or the Wife of his eldest Son and Heir. By the king's companion is meant his wife, that is, the queen consort, during the marriage ; but as the reason of the law was to guard the succession of the crown from any suspicion of bastardy, to violate a queen dowager, or princess dowager, is no treason. On the same principle, the law extends to a second daughter, the eldest being dead during the father's life ; and this, whether there be any sons or not ; but the words of the statute are not applicable to the eldest daughter, if a widow. In either case mentioned in the statute, by " violation " is intended carnal knowledge, as well without force as with it ; and this is high treason in both parties, if both consent.

Levying War against the King in his Realm. Under this branch there must be an actual levying of war, and not barely a consultation so to do ; but the latter is made a distinct treason by the stat. 36 Geo. III. c. 7. during the king's life. Such war must also be levied against the king, and it must be in his realm. The levying war is either *express* and *direct*, or *constructive*. Of the first sort are all insurrections against the person of the king, whether intended to dethrone, imprison, or force him to alter his measures of government, or to remove evil counsellors from about him ; but if, upon a sudden quarrel, from some affront given or taken, and not as a cover for any traitorous design, a number of men should rise and drive the king's forces out of their quarters ; though it would be a great misdemeanor, and if death ensued, might be felony in the assailants ; yet it would not be a treason ; there being no intention against the king's person or government. It must in general be difficult in the beginning of intestine troubles to fix the period when opposition to the established government shall be said to wear the formidable appearance of insurrection, and to constitute what, in the terms of the

act, is called levying of war against the king. It is strictly, therefore, a question of fact to be tried by the jury under all the circumstances. Any assembly of persons, met for a treasonable purpose, armed and arrayed in a warlike manner, is *bellum levatum*, though not *percussum*. Inlisting and marching are sufficient overt acts, without coming to an actual engagement; in the same manner as cruising under an enemy's commission, though no act of express hostility be proved, is an adherence to the king's enemies. The military manner in which insurgents are assembled is not, however, so much the object of consideration, as their intent in assembling.

Holding a castle or fort against the king or his troops, if actual force is used to keep possession, is levying war; but a bare detainer, as by shutting the gates against the king or his troops, without any force from within, lord Hale conceives, will not amount to treason; but it may be fairly questioned, whether there are not many instances of constructive levying of war far short of the real guilt and consequences of such an act, and much less within the true meaning of the statute 25 Edw. III.

Joining with rebels, freely and voluntarily, in any act of rebellion, is levying war against the king; and this too, though the party was not privy to their intent; but it seems necessary in this case, either that the party joining with rebels, and ignorant of their intent at the time, should do some deliberate act toward the execution of their design, or else should be found to have aided and assisted those who did. If the joining with rebels is from fear of present death, and while the party is under actual force, such fear and compulsion will excuse him; but it is incumbent on the party setting up this defence to give satisfactory proof that the compulsion continued during all the time he staid with the rebels. It may perhaps be impossible to account for every day, week, or month; and therefore it may be sufficient to excuse him if he can prove an original force upon him, that he in earnest attempted to escape and was prevented, or that he was so narrowly watched, or the passes so guarded, that an attempt to escape or to refuse his assistance would have been attended with great difficulty and danger; and, if the circumstance will admit of it, that he quitted the service as soon as he could: so that, upon the whole, he may fairly be presumed to have continued amongst them against his will, though not constantly under an actual force or fear of immediate death. Such compulsion or fear, however, is no excuse for any other sort of treason than that of joining with rebels or enemies. So, sending money,
arms,

arms, ammunition, or other necessities to rebels; will *prima facie* make a man a traitor, though they should be intercepted.

Constructive levying of war is in truth more directed against the government than the person of the king; though in legal construction it is levying of war against the king himself. This is when an insurrection is raised to reform some national grievance, to alter the established law or religion, to punish magistrates, to effect innovation in a public concern, to obstruct the execution of some general law by armed force, or for any other purpose which usurps the government in matters of a public and general nature. Insurrections of this nature, though not levelled directly against the person of the king, are yet an attack upon his regal office, and tend to dissolve all government, society, and order. The king is bound in duty to enforce the acts of the legislature and uphold their authority: any resistance, therefore, to these must, in its consequences, extend to the endangering of his person and government, by involving the state in a general distraction; on which account this species of treason falls properly within the clause of levying war against the king. Of the same nature is an assembling together for the purpose of destroying all meeting-houses or bawdy-houses, under colour of reforming a public grievance; or an insurrection to reduce by force the general price of victuals, to enhance the common rate of wages, to level all inclosures, to expel all foreigners, to release all prisoners, or to reform by numbers or an armed force any real or imaginary grievance of a public and general nature, in which the insurgents have no peculiar interest. Against such insurrections, magistrates, sheriffs, and indeed all private persons, may use force to suppress them without any special commission, in the same manner as they may oppose foreign enemies coming hostilely into the kingdom. But where the object of the insurrection is a matter of a private or local nature, affecting, or supposed to affect, only the parties assembled, or confined to particular persons or districts, it will not amount to high treason, although attended with the circumstances of military parade usually alleged in indictments on that head. As, if the rising is only against a particular market, or to destroy particular inclosures, to remove a local nuisance, to release a particular prisoner, unless imprisoned for high treason, or even to oppose the execution of an act of parliament, if it only affects the district of the insurgents; as in the case of a turnpike-act.

Adhering to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm or elsewhere. Beside the statute

tute 25 Edw. III. declaring these acts to be high treason, the 2 & 3 Ann. c. 20. provides, that if any officer or soldier shall, out of England or upon the sea, correspond with any rebel or enemy, or give them advice or intelligence, by letters, messages, signs, tokens, or otherwise, or shall treat or enter into any condition with them, without authority so to do, he shall be guilty of high treason. And, by the general mutiny acts for these and other like offences, the offender shall suffer death, or such other punishment as a court martial shall award.

By the term enemy, is always to be understood a foreign power owing no allegiance to the crown, and in a state of open hostility with us; though perhaps war may not have been regularly declared between the respective countries. Every species of aid or comfort, which, when given to a rebel within the realm, would make the subject guilty of levying war; if given to an enemy, whether within or without the realm, will make the party guilty of adhering to the king's enemies; though, in the case of giving aid to enemies within the realm, a subject might in some instances be brought within both branches of the act. It is also an adherence to the king's enemies if a subject makes war on the king's allies, engaged with him against the common enemy, though no act of hostility be committed against the king or his forces; for by this the enemy is strengthened and the king weakened. The same excuses of compulsion and necessity, which may be made for one who has joined or given aid to rebels or enemies within the realm, will also apply in the cases above alluded to; but the mere act of refusing personal assistance to the king, either against rebels or an invading enemy, amounts not to an adherence within the statute, though undoubtedly it is a high misdemeanor, and punishable by fine and imprisonment.

Entering into the service of any foreign state without the consent of the king, or contracting with it any other engagement which subjects the party to an influence or controul inconsistent with the allegiance due to our own sovereign, such as receiving a pension from a foreign prince without the leave of the king, is not high treason, but at common law a high misdemeanor, and punishable accordingly. Such also is the disobeying of the king's command to a subject abroad to return home; or his writ of *ne exeat regno* to a subject at home commanding his stay. This principle of the common law is enforced by several statutes, which, both by general and special prohibition, restrain the subjects of the British crown from entering into the service of foreign states.

Counterfeiting the Seals. This crime includes the great and privy seals, and privy signet, and is, by statute 7 Ann. c. 21, extended to the seals used in Scotland. On the demise of the king, though the office of the great seal expires, yet the same great seal continues to be the great seal of England, till another is made and delivered. Formerly public proclamation was made in case of a change of the seal, though now a memorandum only is entered on the close rolls. But even after the making and delivery of a new seal, and the breaking of the old one, the counterfeiting of the latter, and applying it to an instrument of the date wherein it was in use, or to an instrument without date, is high treason. Although this is evidently a species of the *crimen falsi*, or forgery, and might naturally have been supposed to be governed by the same rules, yet the difference is considerable; for though the sculpture of the instrument, which is in truth the great seal, be exactly counterfeited, yet if it be not used or applied to seal any thing, though intended for that purpose, the offence is not complete: but it seems there must be an impression made in wax, in testimony of some writing; otherwise it is no more than a mere intent or compassing to counterfeit the seal, and is only punishable as a high misdemeanor. Again, it is said that the affixing of the true great seal by the chancellor, or any casual possessor of it, without warrant, or the affixing it to a wrong instrument knowingly, though a great misprision, is no treason within the act of Edward III. (nor, by consequence, within that of Mary); because this is not a counterfeiting of the seal. For the same reason, the raising of one manor out of a patent and inserting another, or any artificial removing of the true writing and adding new matter; or even, it is said, the taking off the wax impressed with the great seal from the true patent, and affixing it to a writing importing to be grant from the king, are none of them high treason, but only great misprisions. Splitting the seal and closing it again to a false patent is a counterfeiting, because this is an alteration of the seal itself. And where the seal is substantially counterfeited, the adding or omitting of a crown, the leaving out words in the style, or adding others, or making any other minute variation in the counterfeiting, which is often done purposely, and by way of eluding the law, will not alter the case. The disparity, however, may be so great between the true and false seal, that it would not amount to a counterfeiting within the statute, as, if it be evident to the view of every man's eye. Neither would it, if a man were to counterfeit the seal of one prince to a patent supposed to be granted in the time of another; or to the supposed patent of the same prince, after a new seal had been made

made and delivered; if the difference appear very legible and conspicuous; for at the time whereunto it relates there was no such great seal in being.

All aiders and consenters to the counterfeiting of the great or privy seal are within the act of Edward III.; and that of Mary extends to such in terms; but receivers or aiders after the fact are not within the words of either.

HIGH TREASON AGAINST THE KING'S OFFICERS. By the 25 Edw. III. "If a man slay the chancellor, treasurer, or the king's justices of one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places, doing their offices," it is declared high treason. By the 7 Ann. c. 21., to slay any of the lords of sessions, or justiciary of Scotland, in the exercise of their office, is high treason. The protection of the act is only during the times that these persons are in the actual execution of their respective offices; that is, sitting judicially in their places in the king's courts, where they usually, or by adjournment, sit in the administration of justice; for there they represent the king's person. Lord Hale extends it to the lord chancellor's house, when the seal is open there, and to the hearing of causes in his chamber, where, he says, use has sufficiently obtained to give it the style of *sedant for office*. The statute of Edward III. is also confined to the case of killing such officers, and extends not to a wounding or attempt to kill, unless death afterwards ensue from it. Yet the mere striking or assaulting them in the execution of their office is a great misprison, for which, in some cases of aggravation, the offender may lose his hand; but if many conspire to kill any such officer, and one actually accomplishes it, it seems treason in all.

HIGH TREASON IN RESPECT OF COIN. This subject is fully treated on in this volume, page 182.

There are other offences against allegiance, of which some do and some do not amount to high treason, and of the greater part of which sufficient mention has already been made. These are included in the obsolete regulations *with respect to papists, high treason, and other offences against the protestant succession*, many statutes relating to which have expired in consequence of the extinction of the pretender's family.

Seducing, or attempting to seduce, others from their Allegiance and Obedience to the Crown. In all cases falling within the legal notion of compassing the king's death, any attempt of this sort, though no act be done in consequence, will amount to high treason, and come within the statute 25 Ed. III.; but there are some other statutes relative to this matter, well worthy of particular notice.

notice. By the 23 Eliz. c. 1. "If any one shall have, or pretend to have, power, or shall by any means put in practice to absolve, persuade, or withdraw a subject from his natural obedience to the crown, or to withdraw him, *for that intent*, from the religion established by the queen's authority within her dominions, to the Romish religion, or to move him to promise any obedience to any pretended authority of the see of Rome, or of any other prince, state, or potentate, to be had or used within the queen's dominions, or shall do any overt act to that intent or purpose; or, if any person shall by any means be willingly absolved or withdrawn as aforesaid, every such person, his procurers, and counsellors, being lawfully convicted, shall suffer and forfeit as in cases of high treason." It seems the bare pretending to such a power, without any further endeavour to persuade persons from their allegiance, or the bare endeavour so to persuade, without pretending to such power, is within the act. By s. 3. of the same act, aiding or maintaining of such offenders, knowing the same, or concealing any such offence for twenty days after knowledge thereof, without disclosing the same to some justice of peace or other high officer, is made misprision of treason. In later times, the same species of offence has taken another, and not a less perilous shape; and it has been found necessary to pass an act for the better prevention and punishment of attempts to seduce individuals in the army and navy from their duty and allegiance; for which purpose the stat. 37 Geo. III. c. 70. has enacted, "That any person who shall maliciously and advisedly endeavour to seduce any person serving in the king's forces, by sea or land, from his duty and allegiance to his majesty, or to incite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, shall, on conviction of such offence, be adjudged guilty of felony without benefit of clergy." And, by s. 2., any such offence, whether committed in England, or on the high seas, may be tried before any court of oyer and terminer, or gaol delivery, for any county in England, as if the offence had been therein committed. Provided that no person tried and acquitted, or convicted under this act, shall be liable to be tried again for the same offence or fact, as high treason or misprision of treason; nor shall this act prevent the trial of any person, as for high treason or misprision of treason, who has not been tried for the same fact under this act.

Desertion from the King's Forces. This offence, whether by land or sea, in England or abroad, is by several ancient statutes made felony without benefit of clergy. And the offence is
made

made triable by the justices of every shire. These statutes are also levelled against some other inferior military offences, which are punishable as misdemeanors ; but they are altogether fallen into disuse, as well on account of the manner of retaining soldiers therein referred to being no longer adopted, as because, since the annual acts for punishing mutiny and desertion, a more compendious and convenient system of military coercion has obtained. By the statute 1 Geo. c. 47. If any person (other than enlisted soldiers, who are already punishable by law for such offence) shall, in Great Britain, Ireland, Guernsey, or Jersey, persuade or procure any soldier to desert, he shall forfeit 40*l.* to be recovered by any informer ; and if he has not property to that amount, or, from the heinous circumstances of the crime it shall be thought proper, the court before whom he is convicted shall imprison him not exceeding six months, and also adjudge him to stand in the pillory for one hour in some market town next adjoining to the place where the offence was committed. The prosecution must be commenced within six months after the offence.

OF ACCOMPLICES. It is generally said, that in high treason, whether at common law or by statute, there are no accessaries, but all are principals ; that whatever will make a man accessory before or after in felony will make him a principal in treason, and that nothing less will. This is generally true, both with respect to new as well as old treasons, if taken with respect to the offence itself, or the offender after conviction ; but there are certain exceptions and discriminations too minute to be introduced into this work. As it happens more frequently in trials for this than for any other offence, that acts of some of the conspirators, in the absence of the others, are given in evidence against them, it may be proper to notice one general rule on this point. When the connexion between the parties is once established, of which the court must in the first instance judge, then whatever is done in pursuance of that conspiracy by one of the conspirators, though unknown perhaps to the rest at the time, is to be considered as the act of all.

TRIAL. By the statute 1 & 2 Ph. & Mary, c. 10. " all trials for any treason shall be had and used only according to the " due order and course of the common laws of the realm." This offence is triable therefore, like all others, in the county where it is committed, that is, where the overt acts charged in the indictment were done ; but it is enough if one overt act be proved in that county. Treasons committed on the high seas are triable before the admiral, by commission under the great seal, by virtue of the 28 Hen. VIII. c. 15. which in this respect stands unrepealed by the 1 Mary, stat. 1. c. 1.

As to other treasons committed out of the realm, the statute 35 Hen. VIII. c. 2. enacts that they shall be inquired of, heard and determined before the king's bench, by jurors of the same shire where the court shall sit, or else before such commissioners and in such shire as shall be assigned by the king's commission, in like manner and form as if such treasons had been committed within the shire where they are inquired of. But the privilege of peerage is saved. A like provision is made with respect to Scotchmen, who, by the stat. 7 Ann. c. 21. are triable before commissioners in any shire, stewartry, or county of Great Britain, as shall be assigned by the crown for all treasons and misprisions of treasons committed out of the realm of Great Britain. One species of treason, namely, that of committing hostilities at sea, under colour of a foreign commission, or any other species of adherence to the king's enemies there, may be indicted and tried as piracy by virtue of the statutes 28 Hen. VIII. c. 15. 11 and 12 Will. c. 7. and 18 Geo. II. c. 30. There are instances in the books of trials in England for high treason committed by Irishmen in Ireland before the union; one of them is the case of an Irish peer, who objected without avail to the defect of trial by his peers. This has not passed without question: but, since the legislative incorporation of the two countries, these cases cannot be brought into precedent again.

By the statute 7 W. c. 3. "all and every person and persons
 " indicted for high treason, whereby any corruption of blood
 " may be made to them or their heirs, or for misprisions of such
 " treasons, shall be admitted to make their full defence by coun-
 " sel; and the court before whom they are tried, or some judge
 " thereof, is required, immediately on his or their request, to
 " assign them such and so many counsel (not exceeding two) as
 " they may desire: to whom such counsel shall have free access
 " at all seasonable hours." And by 20 Geo. II. this privilege is
 extended to impeachments for treason, corrupting the blood,
 which had before been excepted generally from the benefit of
 the act of William. Each prisoner is entitled, under the statute
 of William, to have two counsel assigned him, though indicted
 jointly with others. The same act of William requires that
 the person or persons so indicted, "shall have a true copy of
 " the whole indictment (but not the names of the witnesses)
 " five days at least before trial, to advise with counsel there-
 " upon, to plead and make their defence, his or their attorney
 " or agent requiring the same, and paying the officer his
 " reasonable fees for writing it, not exceeding five shil-
 " lings for the copy of every such indictment. And every such
 " person shall have a copy of the panel of the jurors who are to
 " try him, duly returned by the sheriff, and delivered to him two
 " days

“ days at least before he shall be tried ;” but alteration has been made in some of these respects by the 7 Ann. c. 21. which enacts, that after the decease of the pretender; “ when any
 “ person is indicted for high treason, or misprision of treason,
 “ a list of the witnesses who shall be produced on the trial for
 “ proving the indictment, and of the jury, mentioning their
 “ names, professions, and places of abode, shall be also given
 “ at the same time that the copy of the indictment is delivered,
 “ and that copies of all indictments for the offences aforesaid,
 “ with such lists, shall be delivered to the party indicted *ten*
 “ days before the trial, and in the presence of two or more
 “ credible witnesses.”

The operation of these acts, it is to be observed, is confined to such persons only as stand indicted for treasons, or misprisions, which work corruption of blood ; therefore the cases of petty treason, of treasons created by acts saving the corruption of blood, and of the treasons expressly excluded by the 13th section of the act, of counterfeiting the king’s coin, the great seal, privy seal, sign manual, and privy signet, all stand upon the same foot as they did before the making of this act. The operation of the statute of William has been still further confirmed by a late act, which took its rise from the attempt of a wretched maniac of the name of Hadfield to assassinate his majesty, by firing a pistol at him in the theatre at Drury-lane. The reason of the statute, which is shortly hinted at in the preamble, is obvious: it was thought incongruous that greater privileges and indulgence should be allowed to a prisoner upon his trial, under a charge for assassinating or attempting the life of his sovereign, than if he had made the same attempt upon the life of any of his majesty’s subjects. Upon this occasion the prisoner had the benefit of the statute of king William, and soon afterward, the legislature passed the stat. 40 Geo. III. c. 93. which enacts that in all cases of high treason, in compassing or imagining the death of the king, and of misprision of such treason, where the overt act or acts alleged in the indictment shall be the assassination or killing of the king, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered, or his person may suffer bodily harm, the person or persons charged with such offence shall and may be indicted, arraigned, tried and attainted in the same manner, and according to the same course and order of trial, in every respect, and upon the like evidence, as if such person or persons stood charged with murder : and none of the provisions contained in the acts of the 7 W. III. and 7 Ann. touching trials in cases of treason and misprision of treason, shall extend to any indictment for high treason or misprision, where the overt

act or acts alleged, are such as aforesaid: but upon conviction, judgment is to be given, and execution done, as in other cases of high treason.

EVIDENCE. The written evidence which may affect a prisoner indicted for treason is the subject of much learned discussion and many distinctions; but it is an essential requisite on the trial of this offence, that the treason charged in the indictment should be proved by two witnesses. It is, however, fully established that one witness to one overt act, and another to another of the same species of treason, are two sufficient witnesses within the statute of Edward. From that time the rule has prevailed. The statute 7 W. III. does not require that each overt act shall be proved by two witnesses, but only that the treason shall be so proved; and, by the express direction of that statute, either two witnesses to the same overt act, or one witness to one and another witness to another overt act of the same treason, that is of the same species of treason, are sufficient. But, if several overt acts are proved by different witnesses singly, they must relate to the same kind of treason, otherwise it is insufficient by the express provision of the statute 7 W. c. 3. which in this respect is only declaratory of what was the known rule of law before. And although the treason itself must be proved by two witnesses in the manner above specified; yet a collateral fact, not tending to the proof of the overt acts, may be proved by one witness only.

JUDGMENT. The judgment in high treason for a man, in all cases except counterfeiting the coin, is to be drawn upon a hurdle to the place of execution, there to be hanged by the neck; to be cut down while he is alive, and his entrails to be taken out and burnt before his face; and his head to be cut off, and body quartered: and the head and quarters to be at the king's disposal. For women the judgment was always the same in high or petty treason, namely to be drawn to the place of execution, and there burnt alive: that is now altered to being drawn and hanged, by the statute 30 Geo. III. c. 48. but the forfeitures and corruptions of blood ensue as before the act; and further, women convicted as principals or accessaries before in petty treason, are made liable to the punishment inflicted by the statute 25 Geo. II. c. 37. on persons convicted of murder. In all cases of treason respecting the coin, whether newly created or not, and so in petty-treason, the judgment is only to be drawn on a hurdle and hanged. The sentence for counterfeiting the great or privy seal is the same as in other treasons. The consequences of a judgment and attainder in treason, are: 1. Corruption of blood to the party attainted; by which he can neither inherit nor transmit lands by descent

to his heirs. 2. Loss of dower to his wife. 3. Forfeiture to the king of all his lands, goods, and chattels: and this relates back to the time of the treason committed. 4. Execution. Without attainder, there is no forfeiture of lands, unless, says lord Hale, where the chief justice of the king's bench, as supreme coroner, in person, upon view of the body of one killed in open rebellion, records it, and returns the record into his own court; when both lands and goods are forfeited.

MISPRISION OF TREASON. Misprision of treason is where a person knowing of a treason, but no party or consentor to it, does not reveal it by a fair and full disclosure in convenient time to the king, or his privy council, or to some magistrate or person having authority to take the examination; and it is doubtful whether a declaration to any other than these is sufficient. By the stat. 1 and 2 Ph. and M. c. 10, and other prior statutes, such a concealment or keeping secret of any high treason is now only a misprision, though formerly it was deemed evidence of an aiding and abetting to the treason itself; but still, under particular circumstances, concealment may amount to evidence of assent to the treason, and so make the party a principal traitor. The knowledge must, however, be of the person of the offender, as well as of the design or offence, for a man cannot be said to conceal that which he does not know.

PUNISHMENT. The punishment for misprision of high treason is the loss of the profits of lands during life, forfeiture of goods, and imprisonment during life: but misprision of petty treason is only punishable by fine and imprisonment, as in case of misprision of felony.

HOMICIDE. Homicide, which is here used to denote the killing of a person by whatever means, is usually treated of under the heads of murder, (of which petit treason is a more aggravated species,) *felo de se*, manslaughter *per infortunium* or chance-medley, and homicide *ex necessitate*; which latter relates, either to the execution or advancement of justice, or to self-defence. But as the shades between some of these are in many instances very faint, and as the difficulty in this branch of the law lies chiefly in discriminating between the one and the other, it is not judged necessary here to enter into all those niceties which are laid down in larger treatises, but merely to describe in a general way each mode of offence, with its usual punishment.

Homicide is said to be either *felonious*, *justifiable*, or *excusable*.

Felonious homicide may be either against the life of another, or against a man's own life. The former is of two sorts, *murder*, and *manslaughter*.

MURDER, in the sense in which it is now understood, is the

voluntarily

voluntarily killing any person under the king's peace, of malice *prepenſe* or afore-thought, either expreſs or implied by law. The ſenſe of the word *malice* is not confined to a particular ill will to the deceased, but is intended to denote an action flowing from a wicked and corrupt motive, a thing done *malo animo*, where the fact has been attended with ſuch circumſtances, as carry in them the plain indications of an heart regardless of ſocial duty, and fatally bent upon miſchief; and therefore malice is implied from any cruel act againſt another, however fudden.

When this malice is exerted to the death of a maſter by his ſervant, or of a huſband by his wife, of an eccleſiaſtic ſuperior, by one owing obedience to him as ſuch, it takes the name of *petit treason*.

The groſſer inſtances of murder, where the depravity of the heart, or malice is apparent, form the *firſt* claſs of caſes under this head. 2. Where an officer, or one who aſſiſts in the advancement of juſtice where he lawfully may, is killed in the regular diſcharge of his duty. 3. Where a private man, lawfully interfering to prevent a breach of the peace, is oppoſed in ſuch his endeavour, and ſlain. 4. Where death happens incidentally in the proſecution of ſome other felony. 5. Where it happens from other unlawful acts, of which death was the probable conſequence, done deliberately, and with intention of miſchief or great bodily harm to particular perſons, or of miſchief indifferently, fall where it may; though the death enſue againſt, or beſide, the original intent of the party. 6. From deliberate duelling.

Clergy is taken away in all caſes of murder and *petit treason* from acceſſaries before, as well as principals; and lands and goods are forfeited; the forfeiture in ſuch caſe relating back to the ſtroke or other cauſe of death; but acceſſaries after the fact, either in *petit treason* or murder, are in no inſtance ouſted of clergy.

MANSLAUGHTER. Manſlaughter is principally diſtinguiſhable from murder in this, that although the act which occaſions the death be unlawful, or likely to be attended with bodily miſchief, yet the malice either expreſs or implied, which is the very eſſence of murder, is preſumed to be wanting in manſlaughter; and the act being imputed to the infirmity of human nature, the correction ordained for it is proportionably lenient. It follows that although there may be ſeveral principals, there cannot be any acceſſaries before to manſlaughter, becauſe it muſt be done without premeditation; but there may be acceſſaries after.

PUNISHMENT. The offence amounts to felony, but within benefit of clergy; and the offender is burned in the hand, and

forfeits all his goods and chattels. By statute 19 Geo. III. c. 74, the burning in the hand may, in the discretion of the court, be changed to a moderate fine, but not to whipping; but this does not prevent the court from also adjudging the offender to be imprisoned for any term not exceeding a year.

The benefit of clergy is however taken away by the 1 Jas. I. c. 8. (commonly called the statute of stabbing) in one species of killing, though done upon a sudden provocation, namely, the offence of mortally stabbing another under certain circumstances.

With respect to indictments for homicide on the high seas, before the admiralty sessions, under the stat. 28 Hen. VIII. c. 15., inasmuch as the marine law does not allow of clergy in any case, if the fact appeared upon the evidence to be no more than manslaughter at common law, the prisoner was, prior to the statute 39 Geo. III. c. 37., constantly directed to be acquitted. But now, by that act, persons so tried, and found guilty of manslaughter only, are intitled to clergy, and subject to punishment, as if they had committed the offence on land.

The cases falling under the head of manslaughter are either, 1st, where death ensues from actions in themselves unlawful, but not proceeding from a malicious or felonious intention; 2dly, from actions in themselves lawful, but done without due care and circumspection for preventing mischief; 3dly, where death ensues upon a sudden combat or affray; or, 4thly, upon heat of blood from a reasonable provocation given.

SUICIDE. The last kind of felonious homicide is that against a man's own life, which denominates the party slaying himself *felo de se*. This is where any one wilfully, or by any malicious act, causes his own death. The law regards this an heinous offence, and has ordained as severe a punishment for it as the nature of the case will admit of, namely, an ignominious burial in the high-way, with a stake driven through the body; and a forfeiture of all the offender's goods and chattels to the king. The usual instances of this offence are either, 1st, where *felo de se* intended his own death; or, secondly, where he intended some other felony, in which he accidentally slew himself.

JUSTIFIABLE HOMICIDE. To make homicide justifiable, it must arise from an imperious duty prescribed by the law, or be owing to some unavoidable necessity, induced by the act of the person killed, without any manner of fault in the party killing. In these cases it is now clearly understood that the jury may acquit the prisoner generally, without obliging him, by a special finding of the matter, to purchase his pardon under the statute of Gloucester, c. 9.; and no forfeiture is incurred.

EXCUSABLE HOMICIDE. Homicide is excusable where the party

party killing is not altogether free from blame; but the necessity which renders it excusable may be said to be partly induced by his own act. And here the party seemed formerly not entitled to a verdict of acquittal, but the jury would find the facts specially, on which the court would bail the party, whose goods were forfeited at common law, to the next sessions or term; and upon certifying the record in chancery, a pardon issued of course under the statute of Gloucester, c. 9. to have them restored, without any application to the king, only paying for suing it out. Of late years, however, it has been more frequent, in cases even of excusable homicide, for the court to direct a verdict of acquittal.

The several descriptions of homicide referable to either of the last two heads come next to be considered.

Homicide *ex necessitate*, which is of three sorts:

1. *In advancement of justice*, which is justifiable by permission of the law. This is, where persons having authority to arrest or imprison others, or to seize goods, or interfering to preserve the peace, and, using the proper means for that purpose, are resisted in so doing, and the party resisting is killed in the struggle; or where a felony has been committed, or a dangerous wound given, and the offender flies from justice, if in the pursuit the party flying be killed, the person killing is justified, provided the other could not be overtaken.

2. Homicide *in execution of justice*; which is justifiable by the command of the law. This is the carrying into execution the sentence of the law on malefactors condemned to death. Herein has been generally considered, 1st, How far the execution may vary from the sentence; 2dly, How far a want of jurisdiction in those who pass the judgment shall affect themselves, or those who carry such judgment into execution; 3dly, How far they are affected by the execution of an erroneous judgment; 4thly, To what extent a false witness is implicated.

3. Homicide *in defence of person or property* under certain circumstances of necessity. This is either justifiable by permission of the law, or only excusable. First, That necessity which justifies a man in killing another who comes to commit a known felony with force against his person, his habitation, or his property. In such cases, the injured party may repel force by force, and is not obliged to retreat, but may pursue his adversary in order to secure himself from danger. Secondly, That which only excuses him who kills another in his own defence upon a sudden combat, having first retreated as far as he could with safety, and with a view of declining the combat, before any mortal blow was given; and having no other possible, or at least probable method of escaping his own immediate

Great destruction or great bodily harm. This is denominated in legal phrase, "*homicide se defendendo* upon chance-medley;" and here chance-medley is used in the proper sense of the word. There is a third sort of dire necessity, which is not induced by the fault of either party, where one of two innocent men must die for the other's preservation: this has been holden by some to be *justifiable*; perhaps it may more properly be considered as *excusable*.

The other kinds of homicide, not felonious, and by law deemed *excusable*, are when the death happens by *misadventure*, or by *chance-medley* usually so called.

The ancient legal notion of homicide by chance-medley was, when death ensued from a combat between the parties on a sudden quarrel; but it has since been frequently confounded with misadventure or accident. Homicide by misadventure is, when a man doing a lawful act, without any intention of bodily harm, and using proper precaution to prevent danger, unfortunately happens to kill another person. This is one species of excusable homicide; but inasmuch as no blame is imputable to the party, and such an one seems more entitled to compassion than to censure, it seems to be now settled, whatever may have been formerly thought, that the jury, under the direction of the court, may acquit him generally, without putting him to purchase a pardon. The act upon which the death ensues must be lawful in itself; for if it be *malum in se*, the case will amount to felony, either murder or manslaughter, according to the circumstances. If it be merely *malum prohibitum*, as shooting at game by an unqualified person, that will not vary the degree of the offence. The usual examples under this head are, 1st, Where death ensues from innocent recreations; 2dly, From moderate and lawful correction in *foro domestico*; 3dly, From acts lawful or indifferent in themselves, done with proper and ordinary caution.

These are the general outlines of the offences included under the term homicide; but they comprehend a vast variety of discriminations, some extremely minute, and some which were in their nature so doubtful as to leave the mind in perpetual indecision until settled by express statutes.

INDICTMENT. In most cases where justice requires that a man should be put upon his trial for killing another, it is usual (and proper if there be any doubt) to charge him in the indictment with murder; because, in many instances, it is a complicated question; and no injury can happen to the individual at all comparable to the evil example of a lax administration of justice: for the verdict and judgment will still be adapted to the nature of the offence, such as it appears.

pears upon the evidence. Where a party is committed on such a charge, he may be brought up by habeas corpus before the court of king's bench, and if the homicide appears to be either justifiable or excusable, they will admit him to bail. Justices of peace ought not to bail in such cases; but should commit till the next coming of the justices of gaol delivery. Even where the offence, if specially presented, would be short of felony, the prisoner, if charged with murder, has this advantage, that an acquittal is a perpetual bar against any other indictment for the same death. On every charge of murder, the fact of killing being first proved, the law presumes it to have been founded in malice until the contrary appear; and therefore all circumstances alleged by way of justification, excuse, or alleviation, must be proved by the prisoner, unless they arise out of the evidence produced against him. Upon the truth of these facts so alleged, the jury alone are to decide; but whether, taking them to be true, the homicide is justified, excused, or alleviated, is a matter of law upon which the jury ought to be guided by the direction of the court.

TRIAL. The general rule in this, as in other matters of criminal jurisprudence, is, that the offence must be inquired of and tried in the same county in which it was committed. But the stat. 33 Hen. VIII. c. 23. enacts, that upon examination before three of the council, treasons, misprisions thereof, and murders committed in any place within the king's dominions, or without, may be inquired of, heard, and determined in any county where the king by his commission of oyer and terminer shall appoint. If a person be stricken and die in one county and the body be found in another, it shall be removed into the first for the coroner of that county to take the inquest: Where the stroke and death are in different counties, the stat. 2 & 3 Edw. VI. c. 24. enacts, that the trial shall be in the county where the death happens.

Where a murder is committed in one county, and there are accessaries in another, an indictment found against such accessaries in the county where the offence of the accessary was committed, is effectual in law; and the justices of gaol delivery or oyer and terminer, or two of them, are to write to the custos rotularum of the county where such principal is attainted or convicted, to certify that fact; and on receipt of his certificate in writing under seal, the justices duly authorized may proceed upon the case of such accessary, who is bound to answer upon arraignment, and abide the event.

By the statute 26 Hen. VIII. c. 6., murders, and other felonies committed in Wales, may be tried in the next adjoining English county where the king's writ runs; which has been

always construed to mean Salop, and not Chester. Appeals, however, must still be brought in the proper county. But supposing the stroke given in an English county, and the death in Wales, there seems to be some difficulty in ascertaining where the trial shall be.

It seems to have been a matter of great doubt, whether the killing of one who died at land of a wound received at sea could be inquired of at common law; but it is enacted by statute 2 Geo. II. c. 21., that where any person shall be feloniously stricken or poisoned upon the sea, or at any place out of England, and die of it in England; or where any person shall be so stricken or poisoned in England, and die upon the sea, or at any place out of England; in either case, an indictment found by the jurors of the county in which the death, stroke, or poisoning happened, shall be good in law against principals and accessaries.

Where both the stroke and death are at sea, or in a haven, river, creek, or place where the admiral has power, authority, or jurisdiction, the 28 Hen. VIII. c. 15. enacts that the offence shall be tried in such shire or place in the realm as shall be limited by the king's commission, directed to the admiral or his deputies, &c. and to three or four such other substantial persons as shall be appointed by the lord chancellor, to hear and determine such offences after the common course of the law. And where one standing on the shore shot at another standing in the sea, who afterwards died on board a ship, all the judges held that the trial must be in the admiralty court, and not at common law.

In regard to homicide committed in foreign parts, Lord Coke says, that if two of the king's subjects go over into a foreign realm and fight there, and the one kill the other, this may be heard and determined before the constable and marshal; relying principally on the stat. 13 Rich. II. c. 2., which says, that "to the constable it pertains to have consuance of contracts concerning deeds of arms, or of war, out of the realm, &c. which cannot be determined or discussed by the common law." But this seems always to have been a doubtful construction of that statute, and may probably be denied at this day, when that jurisdiction has fallen into disuse. The same may be said of the statute 1 Hen. IV. c. 14., which says, that all appeals for things done out of the realm shall be heard and determined before the same jurisdiction. But by stat. 33 Hen. VIII. c. 38. (which with respect to the trial of murder stands unrepealed by the stat. 1 & 2 Ph. & M. c. 10.) it is enacted "that if any person being examined before the king's council, or three of them, upon any treasons, misprisions of treasons, or murders, do confess

felts the same, or are vehemently suspected thereof by the said council upon such examination, the lord chancellor, by the king's command, shall send a commission of oyer and terminer under the great seal to such persons, and into such shires or places as shall be named and appointed, for the speedy trial of such offenders; which commissioners shall have power and authority to inquire, hear, and determine all such offences within the shires and places limited by their commission, by a jury returned by the sheriff, &c. in whatever other shire or place *within the king's dominions or without* such offences so examined were committed." "And no challenge for the shire or hundred (but for want of freehold) shall be allowed." This statute extends not to accessaries.

By 10 & 11 W. III. c. 25. murder and all other capital crimes in Newfoundland, and the isles thereto belonging, are triable in any county here, since when the acts of the 32 Geo. III. c. 46. and 33 Geo. III. c. 76. have enabled his majesty to erect courts of civil and criminal jurisdiction there, which are "to hold plea of all crimes and misdemeanors committed in Newfoundland, and on the islands and seas to which ships or vessels repair from Newfoundland, for carrying on the fishery, and on the banks of Newfoundland, in the same manner as plea is holden of such crimes and misdemeanors in England." These acts are continued by the 34 Geo. III. c. 44. and 35 Geo. III. c. 25.; but nothing appears therein to shew that the jurisdiction under the statute of King William is taken away.

Upon every indictment for petit treason or murder, the jury may negative the higher offence, and find their verdict for any lesser species of homicide. So the defendant in an appeal of murder may be found guilty of manslaughter only; and the appellant in that case shall not be nonsuited; and although it was formerly considered to be optional in the jury upon an appeal of murder, if the case appeared to be only manslaughter, to find accordingly, or to acquit the defendant altogether, yet it is now settled that they must find the manslaughter.

APPEALS. The appeal here mentioned does not signify any complaint to a superior court of an injustice done by an inferior one, which is the general use of the word; but an original suit, at the time of its commencement. An appeal therefore, when thus spoken of, denotes an accusation by a private subject against another, for some heinous crime; demanding punishment on account of the particular injury suffered, rather than for the offence against the public. This method of prosecution is still in force; but very little in use, on account of the great nicety required in conducting it. This private process, for the punishment of public crimes, had probably its origin in

In those times when a private pecuniary satisfaction, called a *weregild*, was constantly paid to the party injured, or his relations, to expiate enormous offences. As therefore, during the continuance of this custom, a process was certainly given, for recovering the weregild by the party to whom it was due; it seems that, when these offences by degrees grew no longer redeemable, the private process was still continued, in order to insure the infliction of punishment upon the offender, though the party injured was allowed no pecuniary compensation for the offence. An appeal of felony may be brought for crimes committed either against the parties themselves, or their relations. The crimes against the parties themselves are larceny, rape, and arson; and for these as well as for mayhem, the sufferers may institute this private process. The only crime against one's relation, for which an appeal can be brought, is that of killing him, by either murder or manslaughter; this, however, cannot be brought by every relation, but only by the wife for the death of her husband, or by the heir male for the death of his ancestor; which heirship was also confined, by an ordinance of Henry I. to the four nearest degrees of blood. It is given to the wife, on account of the loss of her husband: therefore, if she marries again, before or pending her appeal, it is lost and gone; or, if she marries after judgment, she shall not demand execution. The heir, as was said, must also be heir male, and such a one as was the next heir by the course of the common law, at the time of the killing of the ancestor. But this rule has three exceptions: 1. If the person killed leaves an innocent wife, she only, and not the heir, shall have the appeal: 2. If there be no wife, and the heir be accused of the murder, the person, who next to him would have been heir male, shall bring the appeal: 3. If the wife kills her husband, the heir may appeal her of the death. And by the statute of Gloucester, 6 Edw. I. c. 9. all appeals of death must be sued within a year and a day after the completion of the felony by the death of the party. These appeals may be brought previous to any indictment; and if the appellee be acquitted thereon, he cannot be afterwards indicted for the same offence. But if a man be acquitted on an indictment of murder, or found guilty, and pardoned by the king, still he ought not (in strictness) to go at large, but be imprisoned or let to bail till the year and day be past, by virtue of the statute 3 Hen. VII. c. 1. in order to be forthcoming to answer any appeal for the same felony, not having as yet been punished for it; though if he has been found guilty of manslaughter on an indictment, and has had the benefit of

of clergy, and suffered the judgment of the law, he cannot afterwards be appealed. If the appellee be acquitted, the appellor (by virtue of the statute of Westminster 2. 13 Edw. I. c. 12.) shall suffer one year's imprisonment, and pay a fine to the king, besides restitution of damages to the party for the imprisonment and infamy which he has sustained: and if the appellor be incapable to make restitution, his abettors shall do it for him, and also be liable to imprisonment. If the appellee be found guilty, he shall suffer the same judgment, as if he had been convicted by indictment: but with this remarkable difference; that on an indictment, which is at the suit of the king, the king may pardon and remit the execution; on an appeal, which is at the suit of a private subject to make an atonement for the private wrong, the king can no more pardon it, than he can remit the damages recovered on an action of battery; and the ancient usage was, so late as the time of Henry IV. that all the relations of the slain should drag the appellee to the place of execution. However, the punishment of the offender may be remitted and discharged by the concurrence of all parties interested; and as the king by his pardon may frustrate an indictment, so the appellant by his release may discharge an appeal.

JUDGMENT AND EXECUTION. The judgment in petit treason is the same as in the lower species of high treason, namely, to be drawn on a hurdle, and hanged until dead. It was formerly different in the case of women, who were adjudged to be drawn and burned; but this was altered by the 30 Geo. III. c. 48. which subjected them to the same judgment in all respects as men.

The judgment in murder was the same as in other cases of capital felony, namely, to be hanged by the neck until dead; but by 25 Geo. II. c. 37. all persons, found guilty of murder, are to be executed on the next day but one after sentence, unless it happens to be Sunday, and then on the Monday following. The body, if in Middlesex, or London, to be immediately conveyed to the Surgeons' Hall, or such other place as the Surgeons' Company shall appoint, and be dissected and anatomised. And in case the conviction is in any other county or place, the sentence is to be put in execution the next day but one, except it be Sunday, and the body delivered by the sheriff to such surgeon as the judge shall direct. And the sentence is pronounced in open court immediately after conviction (unless the court shall see reasonable cause for postponing it) expressing not only the usual judgment of death, but also the time appointed for the execution.

execution, and the marks of infamy directed for the offender.

The judge may, for reasonable cause, stay execution; regard being always had to the true intent and purpose of the act: or he may appoint the body of any such criminal to be hung in chains; but in no case whatever the body shall be buried, until it has been anatomised. The act also directs that a murderer after conviction shall be confined in a separate cell, and no person but the gaoler or his servants shall have access to him, without licence under the hand of the judge or sheriff; but in case the judge shall stay execution, he may relax these restraints by licence in writing signed by him. Between sentence and execution, the convict is to be fed with bread and water only (except on receiving the sacrament, or necessaries administered medicinally by a professional man) under a penalty upon the gaoler of 20*l.* and imprisonment till it be paid, and forfeiture of his office. And if any person shall rescue, or attempt to rescue, out of prison, any person committed for, or found guilty of, murder, or going to execution; he shall be guilty of felony, without benefit of clergy. Also if any person after execution rescue or attempt to rescue the body out of the custody of the sheriff or his officers, or from the Company of Surgeons, or from the house of any surgeon, he shall be guilty of felony, and transported for seven years.

MAIMING. A Mayhem or Maim, at common law, is such a bodily hurt as renders a man less able, in fighting, to defend himself, or annoy his adversary: but if the injury be such as disfigures him only, without diminishing his corporal ability, it does not fall within the crime of mayhem. Upon this distinction, the cutting off, disabling, or weakening a man's hand or finger, or striking out an eye, or fore tooth, or, as lord Coke adds, breaking his scull, are said to be maims; but the cutting off his ear, or nose, is not such at common law. But, in order to found an indictment, or appeal of mayhem, the act must be done maliciously; though it matters not how sudden the occasion.—All maims are said to be felony; because anciently the offender had judgment of the loss of the same member, &c. which he had occasioned to the sufferer; but now the only judgment, which remains at common law, is of fine and imprisonment; whence the offence seems to have been afterwards considered more in the nature of an aggravated trespass, and Lord Coke classifies it as an offence “under all felonies deserving death, and above all other inferior offences.”

But particular statutes have extended both the crime and the punishment. The 22 and 23 Chas. II. c. 1. is commonly called

called *the Coventry act*, from its having passed on occasion of an assault made on Sir John Coventry in the street, and his nose being slit by persons who lay in wait for him, in revenge, as was supposed, for some obnoxious words uttered by him in parliament. It enacts that if any person shall, on purpose and of malice forethought, by laying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject, with intention, in so doing, to maim or disfigure him; the offender, his counsellors, aiders, and abettors, shall suffer death, as in cases of felony, without benefit of clergy;” but not to work corruption of blood, forfeiture of dower, or of lands, or goods.

To bring an offender within the Coventry act, there must be proof of a deliberate and premeditated design to do to another a personal injury of the sort described; and it must appear that the mischief was done in the manner described therein, that is, on purpose and of malice aforethought, and by lying in wait for that purpose.

A most horrible practice, however, having prevailed among pickpockets and others, of lacerating those who were the objects of depredation or resentment, and the laws being found inadequate to reach and efficiently correct the evil, the legislature interfered, and by the 43 Geo. III. c. 58. (commonly called Lord Ellenborough’s act) which recites, that, whereas divers cruel and barbarous outrages have been of late wickedly and wantonly committed upon the persons of his majesty’s subjects, either with intent to murder, or to rob, or to maim, disfigure or disable, or to do other grievous bodily harm to such subjects; it is enacted, that if any person shall wilfully and maliciously stab or cut any of his majesty’s subjects, with intent to murder, rob, maim, disfigure, or disable them, or to do some other grievous bodily harm, or to obstruct, resist, or prevent the lawful apprehension and detainer of the person so stabbing or cutting, or of any of his accomplices, for any offence, the person so offending, his counsellors, aiders, and abettors shall suffer death without benefit of clergy: provided, that if it appear on the trial, that such act of stabbing or cutting were committed under such circumstances, as that if death had ensued therefrom, the same would not have amounted to murder, the person indicted shall be deemed not guilty of felony.

ASSAULTS WITH FELONIOUS, MALICIOUS, OR UNLAWFUL INTENT. An assault is any attempt or offer with force and violence to do a corporal hurt to another, whether from malice or wantonness; as by striking at him, or even by holding up one’s fist at him in a threatening or insulting manner, or with

with such other circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against his person; as by pointing a weapon at him within the reach of it. Where the injury is actually inflicted, it amounts to a battery, (which includes an assault,) and this, however small it may be, as by spitting in a man's face, or any way touching him in anger without any lawful occasion. But it is excused if the occasion were merely accidental and undesigned, or if it were lawful, and the party used no more force than was reasonably necessary to accomplish the purpose, as to defend himself against a prior assault, or to arrest the other, or make him desist from some wrongful act or endeavour: but to make this excuse valid, the retaliation or other effort must not be excessive, and disproportioned to the necessity, or the provocation received. These offences are punishable by fine and imprisonment, and finding sureties, or with other ignominious corporal penalties, such as the pillory, where they are committed with any very atrocious design; as in the case of assaults with intent to murder, ravish, or commit other felonies or high misdemeanors.

Assaulting Privy Counsellors. The penalty of this offence is mentioned in this volume, p. 11.

Assaulting Members of Parliament. By 11 Hen. VI. c. 11. If any assault or affray be made to any lord spiritual or temporal, knight of the shire, citizen, or burgess, coming to, and attending the parliament, or to other counsel of the king by his commandment, proclamation shall be made three several days in the town where the offence was committed for the party to yield himself before the court of king's bench within a quarter of a year, or at the next day in the term then following; and if he do not, he is to be attainted of the said deed, and pay double damages to the party grieved; to be taxed at the discretion of the judges, or by inquest if needful, and make fine and ransom at the king's will. And if he appear, and is found-guilty, he is to pay to the party grieved his double damages, and to be fined as before-mentioned.

Assaults in the King's Palace. The punishment of these is already described in speaking of the court of the lord steward of the household. See p. 569.

Assaults in Churches and Church-yards. These may, if committed with the hands only, be punished with excommunication, by stat. 5 and 6 Edw. VI. c. 4.; which further enacts, that "if any person shall maliciously strike with, or draw any
" weapon in any church or church-yard, or with intent to strike,
" he shall have one of his ears cut off; or if he have no ears,
" then he shall be marked and burned in the cheek with a hot
" iron, having the letter F therein as a fray-maker and fighter,
" and stand *ipse facto* excommunicated."

Assault

Affault with Intent to murder. The statute under which prosecutions of this sort are most frequently carried on, is the 9 Geo. I. c. 22. (commonly called the black act), which provides that if any person shall wilfully and maliciously shoot at another in any dwelling-house or other place; or shall forcibly rescue any person being lawfully in custody of any officer or other person for such offence; or shall, by gift or promise of money, or other reward, procure any subject to join him in any such unlawful act; he shall suffer death without benefit of clergy. It is not necessary in this case, as in some others to which the act applies, that the offender should have his face blacked, or be otherwise disguised. Malice being an essential ingredient in this offence; neither an accidental shooting, in the intemperance of passion, upon such a provocation as would in law reduce the homicide to manslaughter, is within the meaning of the statute; and although it is not necessary that any evil consequence should ensue, yet the shooting must be with a gun or other instrument, so loaded as to create danger of death, or maim; and it must be levelled at the party. This statute at once creating a new felony and making it capital, it must be so with all its consequences, and therefore every person present aiding and assisting must be a principal in the second degree.

Affault with Intent to rob. This offence at common law was only punishable as a misdemeanor; though by some it had been considered as felony, upon the mistaken maxim, *voluntas reputabitur pro facto*, but now by 7 Geo. II. c. 21. it is enacted, That if any person shall, with any offensive weapon, unlawfully and maliciously assault another; or by menaces, demand any money, goods, or chattels, with intent to rob; such offender shall be transported as a felon for seven years. And if the offender break gaol, or escape before such transportation, or shall return before the expiration of his term, he shall suffer death without benefit of clergy.

Affaults on Persons wrecked. By 26 Geo. II. c. 19. "If
 " any person shall beat, or wound, with intent to kill or destroy,
 " or shall otherwise wilfully obstruct the escape of any person
 " endeavouring to save his or her life from any ship or vessel in
 " distress, or which shall be wrecked, lost, stranded, or cast
 " on shore, in any part of his majesty's dominions, he shall be
 " deemed guilty of felony without benefit of clergy. And if
 " any sheriff or his deputy, justice of the peace, mayor, or other
 " magistrate, coroner, lord of the manor, commissioner of the
 " land-tax, chief or petty constable, or other peace officer, or
 " any custom-house, or excise officer, or other person lawfully
 " authorized, shall be assaulted, beaten and wounded, on ac-
 " count of the exercise of his duty, in or concerning the salvage
 " or

“or preservation of any ship or vessel in distress, or of any ship, goods or effects, stranded, wrecked, or cast on shore, or lying under water in any of his majesty’s dominions; the offender, on conviction, at the assizes or general gaol delivery, or at the quarter sessions, shall be transported for seven years.”

Affaults by Mariners. The punishment of mariners preventing by violence their captain from defending his ship, is mentioned in this volume, p. 276.

Affault on Account of Gaming. By 9 Anne, c. 15. if any person shall assault and beat, or challenge or provoke to fight, any other person on account of money won by gaming, such person shall forfeit all his goods, chattels, and personal estate whatsoever, and be imprisoned in the county gaol for two years.

Affault with Intent to spoil Garments. By 6 Geo. I. c. 23. “If any person shall wilfully and maliciously assault another in the public streets or highways, with an intent to tear, spoil, cut, burn, or deface his garments or cloaths, the offender shall be guilty of felony, and liable to be transported for seven years. This statute was occasioned by the insolence of certain weavers and others, who, on the introduction of some Indian fashions prejudicial to their own manufactures, made it a practice to deface them either by open outrage, or by privily cutting, or casting *aqua fortis* in the streets upon such as wore them.

Affault with Intent to obstruct the free Passage of Grain. By 36 Geo. III. c. 9., “If any person shall wilfully and maliciously beat, wound, or use any other violence to or upon any one, with intent to deter or hinder him from buying corn or grain in any market or other place within this kingdom; or unlawfully beat or wound the driver of any waggon, cart, or other carriage or horse, loaded with wheat, flour, meal, malt, or other grain, with intent to stop such wheat, &c., every such person, being convicted before two or more justices of the peace, or at the sessions, shall be sent to the common gaol or house of correction, to be kept to hard labour, not less than one, nor exceeding three months. And for a second offence transported for seven years. The same provisions were before enacted by the 11 Geo. II. c. 22., which is still in force; with this addition, that for the first offence the justices were also directed to adjudge the offender to be publicly whipped by the keeper of the gaol or house of correction, on the first convenient market day, at the market cross or place, between the hours of eleven and two. In both acts there is a provision, that no person punished by virtue thereof, shall be punished for the same offence by any other statute; but 36 Geo. III. declares, that nothing therein contained shall be deemed to abridge or take away any provision already made by law, or any part thereof, for the suppression or punishment of any offence mentioned in that act.

Affaults on Master Wool-combers. By 12 Geo. I. c. 34. If any person shall assault or abuse any master wool-comber, or master weaver, or other person concerned in the woollen manufactures, for not complying with any illegal bye-laws, ordinances, rules, or orders, formed in unlawful clubs and societies; such offender being lawfully convicted, on any indictment found within twelve calendar months, shall be adjudged guilty of felony, and transported for seven years; and the like provisions are extended to combers of jersey and wool, frame work knitters, and weavers or makers of stockings, and to all persons whatsoever employed or concerned in any of the said manufactures.

FALSE IMPRISONMENT. This offence is most frequently the object of a civil action for a compensation in damages; that mode of it which relates to the arrest of ambassadors has been noticed in this volume, p. 54.

KIDNAPPING. The most aggravated species of false imprisonment is the stealing and carrying away, or secreting of any person, sometimes called kidnapping, which is an offence at common law, punishable by fine, imprisonment, and pillory. Of this nature is the offence pointed out by the 43 Eliz. c. 13., which, reciting that many subjects dwelling and inhabiting within the counties of Cumberland, Northumberland, Westmoreland, and the bishopric of Durham, had been taken, some from their houses, others in travelling, or otherwise, and carried out of the same counties, or to some other place within the same, as prisoners, and cruelly treated till they have been redeemed by great ransoms, enacts, that whoever shall, without good and lawful warrant and authority, take any of the queen's subjects against his or their wills, to ransom them, or to make a prey or spoil of his or their person or goods, upon deadly feud or otherwise; or whoever shall be privy, consenting, aiding, or assisting unto any such taking, detaining or carrying away of any such person or persons, prisoners as aforesaid, shall be adjudged felons, and suffer death without benefit of clergy, and shall forfeit as in case of felony.

The forcible abduction, or stealing and carrying away of any person, is greatly aggravated by sending them away from their own country into another, properly called kidnapping; though the punishment at common law is no more than fine, imprisonment, and pillory. By the habeas corpus act it is declared that no subject of this realm, being an inhabitant of the kingdom, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into ports, garrisons, islands, or places beyond the seas, within or without the king's dominions; that every such imprisonment is illegal; and any person so

soned may maintain an action of false imprisonment against those by whom he was imprisoned, sent prisoner, or transported, and against all who framed, contrived, wrote, sealed, or countersigned any warrant for such detainer, imprisonment, or transportation, or were advising, aiding, or assisting in the same, and the plaintiff in every such action shall have treble costs, besides damages; which shall not be less than 500*l*. And the persons convicted of such acts shall be disabled to bear any office of trust or profit within the king's dominions; and shall incur the pains, penalties, and forfeitures of a præmunire, and be incapable of pardon. No person can be tried or troubled for any offence against the act unless within two years after the offence committed, or if the party grieved be in prison, then within two years after the decease of the party imprisoned, or delivery out of prison, which shall first happen.

Also by 11 and 12 W. and M. c. 7. if any master of a merchant ship or vessel shall during his being abroad force any man on shore, or wilfully leave him behind, in any of his majesty's plantations or elsewhere, or shall refuse to bring home with him again all such of the men whom he carried out with him, as are in a condition to return, when he shall be ready to proceed on his homeward bound voyage; he shall suffer three months imprisonment without bail or mainprize.

RAPE. This offence is felony without benefit of clergy by various statutes. If the object of it be under the age of ten years, her consent cannot be alleged in justification; and if above ten, and under twelve, still, notwithstanding her consent, it is a high misdemeanor; so is an assault with intent to commit this crime, although the purpose is not effected.

FORCIBLE OR FRAUDULENT ABDUCTION, MARRIAGE, OR DEFILEMENT OF WOMEN OF SUBSTANCE. The 3 Henry VII. c. 2. reciting that "where women, as well maidens as
 " widows and wives, having substances, *some* in goods moveable,
 " and some in lands and tenements, and some being heirs appa-
 " rent unto their ancestors, for the lucre of such substances be
 " ostentinties taken by misdoers, contrary to their will, and
 " often married to such misdoers, or to other by their assent, or
 " defiled," enacts, "that whatever person or persons from
 " henceforth takes any woman, so against her will, unlawfully,
 " that is to say, maid, widow, or wife; such taking, procuring,
 " and abetting to the same, and also receiving wittingly the same
 " woman so taken against her will, and knowing the same, be
 " felony; and that such misdoers, takers, procurators to the same,
 " and receitors knowing the said offence, in form aforesaid, be
 " adjudged principal felons." And the 39 Eliz. c. 9. takes away
 " lit of clergy from principals, procurers, and accessaries before
 " the

the fact. If a woman is forcibly taken in one county, and afterwards goes voluntarily into another county, and is there married or defiled with her own consent, the fact is not indictable in either: for the offence, which consists in the forcible taking and subsequent marriage or defilement, is not complete in either. But if the force continued upon her at all in the other county in which she was so taken, the offender may be indicted there; although the actual marriage or defilement afterwards took place with her own consent. It is held that a woman so taken away may be a witness against the man who has married her, but the practice has not been uniform; although the principle is settled; the testimony must be received with great caution.

By 4 and 5 Ph. and Mary, c. 8. if any person above the age of fourteen years shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession and against the will of her father, mother, or lawful guardian, such person shall suffer imprisonment for two years, or else pay such fine as shall be assessed by the court of star chamber; and "If any person or persons shall so take, or cause to be taken away as aforesaid, and deflower any such maid or woman child, or shall against the will, or unknowing of or to the father if alive, or of the mother having the custody or governance of such child if the father be dead, by secret letters, messages or otherwise, contract matrimony with any such maiden or woman child; every such person shall suffer imprisonment for five years, or else shall pay such fine as shall be assessed by the star chamber, a moiety to the crown, and the other moiety to the parties grieved." By the 26 Geo. II. c. 33. the marriage is void; but the statute of Phil. and Mary is in force, and the court of king's bench has the powers which are given to the star chamber.

POLYGAMY OR BIGAMY is noticed in vol. I. p. 410.

CRIME AGAINST NATURE. This offence, of which it is horrible even to speak, is felony without benefit of clergy; accessaries before or after, are not deprived of clergy; but persons present aiding and assisting, are deemed principals.

THEFT. The modes of theft punishable by law are subject to many nice distinctions, arising from an infinite variety of cases, and far too minute to be enumerated in this work.

BURGLARY. Burglary, which is derived from the German *burg*, a house, and *laron* or *latro* a thief, is a felony at common law, and is generally defined to be a breaking and entering the mansion house of another, in the night, with intent to commit some felony within the same, whether such intent be executed or not.

To perfect this crime, there must be a breach of the house made

made or procured by the act of the felon; and this either by construction of law, or by actual force. But although, generally speaking, every entry by a trespasser is a breaking in law, yet that is not sufficient in this case; for the words of the indictment are, feloniously and burglariously broke, &c. Therefore, if the door or window be left open, and the thief enter and take away the goods in the night, that will not constitute a burglary. Though it is otherwise if a thief enter by a chimney, because it is as much inclosed as the nature of the thing will admit of. To amount to a breaking within this branch of the definition, the entrance must be obtained either by fraud, conspiracy, threat, or force.

There must also be an entry, but if any part of the body, as a hand, or foot, be within the house, it is sufficient. The entry need not be at the same time as the breaking, provided both be in the night; therefore, if thieves break a hole in the house one night, and enter and commit felony on another, it is burglary.

The term *mansion* includes three distinct objects of burglary; 1. It may be committed, against the walls or gates of a walled town; 2. Against churches; and 3. Against private dwelling-houses. Every house for the dwelling and habitation of man is taken to be a mansion-house wherein burglary may be committed. Likewise a chamber or room, be it upper or lower, wherein any person inhabits or dwells, is a mansion-house in law. But no burglary can be committed by breaking into any inclosed ground, or into any booth or tent, though the owner lodge therein: but in case of robbery committed in these latter, a remedy is provided by the 5 & 6 Edw. VI. c. 9. The mansion not only includes the dwelling-house, but also the out-houses, such as barns, stables, cow-houses, dairy-houses and the like, if parcel of the messuage, though under the same roof, or contiguous.

Of *Inhabitaney* there must be some token, either by the present or at least by previous occupation of the owner, or some part of his family. However it is agreed by all, that a house wherein a man dwells but for part of the year, or a chamber in one of the inns of court, or a college, wherein a person usually lodges, may be called his dwelling house, whether any person were actually therein or not at the very time of the offence. Yet, where neither the owner nor any part of his family were in the house at the time of the breaking and entering, he must have quitted it with intent to return, in order to have it still considered as his mansion.

It is necessary to ascertain to whom the mansion belongs, and to state that with accuracy in the indictment: the rule on this

this Subject is somewhat complex, but thus reduced by Mr. East from whose Treatise on Pleas of the Crown, most of the foregoing and many following observations are derived. Where the legal title to the whole mansion remains in the same person; there, if he inhabits it either by himself, his family, or servants, or even by his guests, the indictment must lay the offence to be committed against his mansion. And so it is although he let out apartments to inmates, who have a separate interest therein, if they have the same outer door or entrance into the mansion in common with himself; but if distinct families be in the exclusive occupation of the house, and have their ordinary residence or domicile there, without any interference on the part of the proper owner; or if they be only in possession of parts of the house as inmates to the owner, and have a distinct and separate entrance; then the offence of breaking, &c. their separate apartments must be laid to be done against the mansion-house of such occupiers respectively.

Burglary must be committed *in the night*. Anciently the day was accounted to begin only from sun rising, and to end immediately upon sun-set: but it is now generally agreed, that if there be day light enough begun or left either by the light of the sun or twilight, whereby the countenance of a person may be reasonably discerned, it is no burglary; but this does not extend to moon light; for then many midnight burglaries would go unpunished; and besides, the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of the night, when all the creation except beasts of prey are at rest, when sleep has disarmed the owner, and rendered his castle defenceless.

The punishment of burglary is death without benefit of clergy; and by 5 Anne, c. 31. (which is principally levelled at the receivers of stolen goods,) any person who shall receive, harbour or conceal any burglars, &c. knowing them to be so, shall be taken as an accessory, and suffer death as a felon convict. A reward of 40*l.* and certificate of exemption from parish offices are given on the conviction of burglars by several statutes; and also a pardon to an offender out of prison discovering two or more accomplices.

LARCENY AND ROBBERY. The offence of feloniously taking the personal property of another is denominated either *larceny*, where the fact is accomplished secretly, or by surprise or fraud; or *robbery*, where accompanied by circumstances of violence, threat, or terror. These two offences, which in their nature are intimately connected, the first being includ-

ed in the other, are also in part blended together by the statute law. Simple larceny is defined to be, the wrongful or fraudulent taking and carrying away by any person of the mere personal goods of another, from any place, with a felonious intent to convert them to his (the taker's) own use, and make them his own property, without the consent of the owner.

There must be an actual taking, or severance of the thing, from the possession of the owner; for as every larceny includes a trespass: if the party be not guilty of a trespass in taking the goods, he cannot be guilty of felony in carrying them away. Hence it is that if the party obtain possession of the goods lawfully as upon a trust, for or on account of the owner, by which he acquires a kind of special property in them, he cannot afterwards be guilty of felony in converting them to his own use, unless by some new and distinct act of taking, as by severing part of the goods from the rest with intent to convert them to his own use, he determines the privity of the bailment, and the special property thereby conferred upon him. A bare charge of goods, such as that which is committed to a servant over the goods of his master, or a mere liberty to make use of a thing for a particular purpose, such as a guest at an inn has of the furniture, &c.; in as much as it does not in law convey even the possession of the goods, much less any special property in them, furnishes no objection to a charge of felony. In like manner, though the possession be delivered by the owner for a particular purpose, yet if it be obtained by any fraud it amounts to a tortious taking, in the same degree as if the party had taken it without any delivery at all from the owner. Though otherwise if the delivery be obtained on a trust without fraud. So a colourable gift, which in truth was extorted by fear, amounts to a taking and trespass in law; and has often been holden to constitute robbery, and this though the thing obtained were not originally in the contemplation of the robber; but received as the price of desisting from a felonious attempt of another kind. But the taking in all cases must be against or without the consent of the owner to constitute robbery or larceny. But although there must be a taking in fact from the actual or constructive possession of the owner, yet it need not be by the very hand of the party accused. For if he fraudulently procure another, who is himself innocent of any felonious intent, to take the goods for him, it will be the same as if he had taken them himself; and the taking must be charged to be by him. As if one procure an infant within the age of discretion to steal goods for him, or if by fraud or perjury he got possession of goods by legal process without colour of title.

The least removal of the thing taken from the place where it was before is a sufficient *carrying away*, though it be not quite carried off. If the thief once takes possession of the thing, the offence is complete, though he afterwards returns it, or lets it fall in struggling, and never takes it up again.

On the point by whom larceny may be committed, it is observed that the same excuses of insanity, idiocy, coverture, and infancy, which prevail in other cases of felony, will of course have place here. Jointenants or tenants in common of a chattel cannot be guilty of stealing the same from each other, because the property and possession is in both; but under some circumstances a man may be guilty of larceny in stealing his own goods, or of robbery in taking his own property from the person of another. So he may be an accessory after the fact to such larceny or robbery, by harbouring the thief or assisting his escape. For example; if a man delivers goods to another to keep for him, and then steals them with intent to charge him with the value of them: this is felony in the person who steals, although he is the owner. So likewise, a man having delivered money to his servant to carry to some distant place, disguises himself, and robs the servant on the road with intent to charge the hundred; this is undoubtedly robbery. By the same rule the wife may steal the goods of her husband delivered for a limited purpose to another person; but a feme covert cannot commit larceny of her husband's goods from his own possession, because in law they are considered but as one person, and she has a kind of interest in them. On this account not even a stranger can commit larceny of such goods by the delivery of the wife, although he knew they were the husband's; but he may by taking the wife by force and against her will, together with the goods, by force of the statute. Neither can the wife commit larceny in the company of her husband; for it is deemed his coercion, and not her own voluntary act. Yet if she do it in his absence, and by his mere command, she is then punishable as if she were sole. And the husband, it is said, may be accessory to the wife in receiving her; though not the wife for receiving her husband.

For the prevention of larcenies by servants, and in aid of the common-law on that point, several statutes have been made. That of the 33 Hen. VI. c. 1. provides against the dishonesty of those servants who on the death of their masters violently seize or spoil their property, that on information exhibited by the executors to the chancellor a writ may issue, commanding such servants to appear in the court of king's bench, to answer

such actions as the executors may bring against them, and if they do not appear, they may be attainted of felony. The statute 21 Hen. VIII. c. 7. reciting the embezzlements and frauds committed by servants to whom property was intrusted by their masters, enacts, that all such servants (being of the age of eighteen and not apprentices) to whom any caskets, jewels, money, goods, or chattels, by their masters or mistresses, shall be delivered to keep, if the servants go away with them with intent to steal them, or else being in the service of their said master or mistress, without their assent or command, embezzle such caskets, &c. or otherwise convert them to their own use with purpose to steal them, if they are of the value of forty shillings, the offender shall be punished as other felons are, by the course of the common law. After some alterations, repeals, and re-enactments, this statute still continues in force, and the offenders are deprived of clergy. It extends however only to such as were servants to the owners of the goods, both at the time of the delivery and when they were stolen. This statute however is but little resorted to at this day; for, notwithstanding the inference which might be drawn from it, it is a clear maxim of the common law, that where one has only the bare charge or custody of the goods of another, the legal possession remains in the owner, and the party may be guilty of trespass and larceny in fraudulently converting them to his own use. Thus a burler may commit larceny of plate in his custody, or a shepherd of sheep. The same of a servant intrusted to sell goods in a shop. This rule appears to hold universally in the case of servants, whose possession of their master's goods by their delivery or permission is the possession of the master himself. Still as the common law and the statute left some cases unremedied, and some doubts unsatisfied, particularly in those instances, where not received into the master's actual possession before the taking by the servant; the declaratory statute of the 39 Geo. III. c. 85. was framed, which enacts and declares, that if any servant, clerk, or any person employed in the capacity of a servant or clerk, to any person or body corporate or politic, shall, by virtue of such employment, receive or take into his possession any money, goods, bond, bill, note, banker's draft, or other valuable security, or effects, for or in the name or on the account of his master or employers, and shall fraudulently embezzle, secrete, or make away with the same, or any part thereof; every such offender shall be deemed to have feloniously stolen the same, although the property was no otherwise received into the possession of such servant or clerk; and every such offender, his adviser, procuror, aider, or abettor, shall be transported for any term not exceeding fourteen years,

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The law against embezzlement by servants or clerks in the bank is mentioned in this volume, p. 165; that relative to persons in the post office at p. 36; and by the stat. 24 Geo. II. c. 11. the servants of the South-sea Company are subjected to the same penalties.

For the security of manufacturers, who are obliged to intrust large quantities of raw materials to their servants or workmen, several provisions are made. The most general is in the statute 17 Geo. III. c. 56. by which persons employed in the felt or hat, woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair or silk manufactures, or in manufactures of those materials mixed one with another, who shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which they are intrusted, whether wrought up or not, are punishable in a summary manner before two justices; who are directed for the first offence to commit the offender to the house of correction or other public prison, there to be kept to hard labour not less than fourteen days, nor more than three months, and for any subsequent offence, not less than three months, nor more than six; and in either case may also in discretion order the party to be publicly whipped. And if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner, from any such person, such materials, &c. they shall, on like summary conviction, for the first offence forfeit not less than 20*l.* nor more than 40*l.* or on failure of payment shall be committed in like manner for not more than six, nor less than three months, or committed for three entire days, and once publicly whipped; for a second offence to be committed till the quarter sessions, and on conviction forfeit not more than 100*l.* nor less than 50*l.* or on failure of payment shall be committed to the house of correction, to hard labour, not more than six, nor less than three months, or for three entire days, and to be once publicly whipped. Selling, pawning, pledging, exchanging, or otherwise unlawfully disposing of any of the said materials, knowing them to have been embezzled, &c. subjects the offender to the same punishment as the principal.

The property of the plate glass manufactory is protected by a particular statute, 13 Geo. III. c. 38. which enacts that if any person or persons shall by day or night break into any house, shop, cellar, vault, or other place, or building, or by force enter into any house, &c. belonging to the said manufactory, or wherein the same shall be then carrying on, with intent to steal, cut, break, or otherwise destroy any glass, or plate glass, wrought or unwrought, or any materials, tools, or implements, used in, for, or about; the making thereof, or any goods

goods and wares belonging to the said manufactory; or shall steal, or wilfully or maliciously cut, break, or otherwise destroy, any such glass, materials, tools, or implements; every such offender shall be transported not exceeding seven years. But the stat. 38 Geo. III. c. 17. (local and private acts) enables the court before whom any such offender is tried, to adjudge him to suffer a less punishment.

Stealing woollen cloth or manufacture from the rack or tenters where it is put to dry, in the night time, is declared by 22 Chas. II. c. 5. to be felony without benefit of clergy; but the court has a power to sentence the offender to transportation for seven years, and he must suffer capitally if he returns within the time. The 15 Geo. II. c. 27. gives power to justices of the peace, on complaint of such offences, to issue search warrants, and on discovery of the goods to apprehend the possessor; and if he cannot give a good account of his possessing them; to make him pay treble their value or be imprisoned. For the second offence both forfeiture and imprisonment are incurred, and on a third offence the party is to be committed till the next assizes, or great sessions, where he shall be tried; and if he shall not, by producing the party of whom he acquired the property or possession of such goods, or otherwise, prove to the satisfaction of the jury, that he lawfully obtained them, he shall be transported for seven years. But this act does not alter any former law in force for stealing or receiving such cloth, woollen yarn or wool, except by laying the proof on the offender.

By 18 Geo. II. c. 27. every person who shall, by day or night, feloniously steal any linen, fustian, calico, cotton cloth, or cloth worked, woven, or made of any cotton or linen yarn mixed, or any thread, linen, or cotton tape, icke, filletting, laces, or any other linen, fustian, or cotton goods or wares, laid, placed, or exposed to be printed, whitened, bowked, bleached, or dried, in any whitening or bleaching grounds, house, or other building, ground, or place, made use of by any calico printer, whitster, cröster, bowker, or bleacher, to the value of ten shillings; or who shall aid or assist, or procure any other person to commit any such offence; or who shall buy or receive any such goods knowing them to be stolen, shall be deemed guilty of felony without benefit of clergy. But the court may, instead of giving judgment of death, order such offender to be transported for fourteen years, but then breaking jail, or returning from transportation, before the term, is felony without clergy. Also the 4 Geo. III. c. 37. makes the breaking into
any

any house, shop, or other place or building, with intent to steal, cut, or destroy, any linen, yarn, or cloth, &c. felony without benefit of clergy.

The stealing of any kind of military, naval, or ordnance stores or provisions, to the value of twenty shillings, is made felony by the 31 Eliz. c. 4. and clergy is taken away by the 22 Chas. II. c. 5.; but the court may cause the offender to be transported for seven years. And although the statute fixes the value to be stolen at twenty shillings, still they who rob to a smaller amount may be indicted at the common law.

The stat. 3 and 4 W. and M. c. 9. enacts and declares, that if any person shall take away, with intent to steal, any chattel, bedding, or furniture, which by contract or agreement he is to use, or shall be let to him in any lodging; such taking shall be adjudged larceny and felony; and the offender shall suffer as in case of felony. But it has been decided that an entire house let ready furnished is not within the provisions of this act.

It is a common error to believe that it is no felony for one, reduced to extreme necessity, to take so much of another's victuals, as will save him from starving; such a case, strongly and evidently apparent, might be a good ground for a recommendation to mercy, but no justification of felony.

Larceny must be committed of *goods* personal, and not of chattels real, or such as are annexed to the freehold, unless in certain cases provided for by statute; for at common law it is merely a trespass, and not a felony to take such things. Therefore by the common law, no larceny can be committed of trees, grass, hedges, stones or lead of a house, or the like; but when once they are severed from the freehold, either by the owner, or even by the thief himself, if there be an interval between his severing and taking them away, so that it cannot be considered as one continued act, it would then be felony. But several exceptions to the general rule have been made by statute.

The 6 Geo. III. c. 36. enacts that every person who shall, in the night time, pluck up, dig up, break, spoil, or destroy, or carry away, any roots, shrubs, or plants, of the value of five shillings, being in any garden, nursery, or other enclosed ground, shall be guilty of felony, and transported for seven years. And persons abetting or assisting, or who shall buy or receive such roots or plants, of the value aforesaid, knowing them to be stolen, shall be subject to the same punishment. By another statute of the same session, (c. 48.) every person who shall pluck up, cut, spoil, destroy, take, or carry

ry away, any root or plant out of any fields, nurseries, gardens, or garden grounds, or other cultivated lands; and shall be convicted before one justice of the peace, shall forfeit for the first offence not exceeding forty shillings; for the second, not exceeding 5*l.*; and if convicted of a third offence shall be transported for seven years. Larceny in respect to other growing crops, as turnips, potatoes, cabbages, parsnips, peas, or carrots, subjects the offender, on summary conviction before a justice of peace, to a small fine, or, in default, to imprisonment in the house of correction.

Statutes also provide expressly against some other modes of larceny.

By 6 Geo. III. c. 36, in the night time to lop, top, cut down, break, throw down, bark, burn or otherwise spoil or destroy, or carry away any oak, beech, ash, elm, fir, chesnut, or asp timber tree, or other tree standing for timber, or likely to become timber, is felony and punishable with transportation for seven years. Aiders and abettors to be treated as the principals.

By statute of the same session, c. 48. the same or nearly the same offences, in any of the king's forests or chases, subject the offender, on conviction before one justice of peace, for the first offence to forfeit a sum not exceeding 20*l.*; for a second offence not exceeding 30*l.*; and for the third offence to be transported for seven years. For the purposes of that act, oak, beech, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees, shall be deemed timber trees; to which the 13 Geo. III. c. 33. adds poplar, alder, larch, maple, and hornbeam.

By 4 Geo. II. c. 32. every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail whatsoever, being fixed to any dwelling-house, out-house, coach-house, stable, or other building, or fixed in any garden, orchard, court-yard, fence or outlet, belonging to any house, or building, shall be deemed guilty of felony; and may be transported for seven years; abettors and receivers the same. The 21 Geo. III. c. 68. made to explain and amend the former, declares that they who shall steal, rip, cut, break, or remove with intent to steal any copper, brass, or bell-metal utensil, or fixture, being fixed to any dwelling-house, out-house, or other building, used or occupied with, or belonging to, a dwelling-house or other building, or fixed in any garden, court-yard, or outlet belonging thereto, or any iron rails or fencing set up or fixed in any square, court, or other place, shall be in like manner transported for seven years, or kept in prison to hard labour, not more than three years, nor less than

than one; and once at least, but not more than thrice, publicly whipped. Abettors or receivers subject to the same punishment.

By 25 Geo. II. c. 10. breaking and entering by force into any black-lead mine, with intent to steal any wad, or black cawke, or black lead, or stealing any, although the entry was not by force: or aiding, abetting, or procuring any person to commit such offence; is felony; punishable with one year's imprisonment and hard labour; public whipping; or transportation for seven years; breaking prison, or returning before the expiration of the term, felony without clergy.

By 39 and 40 Geo. III. c. 77. any person stealing any coal, culm, or coak, wood, iron, ropes, or leather, not exceeding the value of five shillings, from any bank, yard, wharf, or other place, belonging to any manufacturer or coal dealer, or off or out of any boat, barge, waggon, cart, or other carriage; or stealing or embezzling any tools or implements used for cutting or getting coal, culm, or other minerals, not exceeding the value above mentioned, and being convicted before one justice of peace, is subjected to certain penalties, or imprisonment in lieu thereof, or until payment, but no other prosecution. And miners taking or removing iron stone or iron ore, with intent to defraud the proprietor, may on conviction before a justice of peace be imprisoned not exceeding three months.

As larceny cannot be committed of things real at common law, neither can it be committed of charters or other written assurances concerning the realty, because they favour of the same nature; nor can it be committed even of the box or chest in which they are kept.

The same rule prevailed with respect to records, writs, and other process of the courts of law and equity; but by 8 Hen. VI. c. 12. if any record, or parcel of the same, writ, return, panel, process, or warrant of attorney, in the king's superior courts, or in his treasury, be stolen, withdrawn, or avoided by any clerk, or other person; so that any judgment be reversed; such offender, his procurers, counsellors, and abettors, being duly convicted by their own confession, or by inquest, (half of which shall be of the men of any of the same courts (*i. e.* officers) and the other of other men, (*i. e.* of common jurors) shall be guilty of felony. And the inquiry shall be before the judges of the one or the other bench. Though accessaries before are only named in the statute, yet there may be accessaries after by the general construction of law. This statute only extends to the courts expressly named, and to the court of chancery, so far only as it proceeds according to the course of the common law. And it does not extend to the judges; because clerks are first named,

named, who are inferior to them. But judges in all cases, as well as others in cases not made felony by the above act, are by the stat. 8 Rich. II. c. 4. to pay a fine to the king, and make satisfaction to the party, for falsely entering pleas, or raising rolls, or changing verdicts, to the disherison of any one.

In order to make the stealing of goods felony, they ought to have some worth in themselves, and not merely from their relation to some other thing: and therefore bonds, bills, notes, and other securities, which concern mere *choses in action*, were not the subjects of larceny at common law, as they were of no intrinsic value; but now, by 2 Geo. II. c. 25. it is enacted, “that if any person shall steal any
“exchequer orders, or tallies, or other orders, intitling any
“other person to any annuity, or share in any parliament-
“ary fund, or any exchequer bills, bank-notes, south-sea
“bonds, East-India bonds, dividend warrants, of the bank,
“South-sea company, East India company, or any other
“company, society, or corporation, bills of exchange, navy
“bills or debentures, Goldsmith’s notes for the payment of
“money or other bonds, or warrants, bills or promissory notes,
“for the payment of any money, being the property of
“any other person, or of any corporation; notwithstanding
“any of the said particulars are termed in law a *chose in*
“*action*; shall be deemed guilty of felony of the same na-
“ture, and in the same degree, and with or without the
“benefit of clergy, in the same manner as it would have
“been, if the offender had stolen any other goods of like
“value with the money due on such orders, &c. or secur-
“ed thereby, and remaining unsatisfied.”

It is generally said that larceny cannot be committed of that wherein none have any determinate property, as of treasure-trove, waifs, &c. till seized. The same was said of wreck; but now the legislature have by a most just and humane statute, (26 Geo. II. c. 19.) protected property in this state against plunderers. Nor can larceny be committed of such animals in which there is no property, as of beasts that are *feræ naturæ*, and unreclaimed; such as deers, hares, and conies in a forest, chase, or warren; fish in an open river, or pond; old pigeons out of the house; or wild fowls at their natural liberty: although any person may have an exclusive right *ratione loci aut privilegii*, to take them if he can in those places. But if they are dead, reclaimed, and known to be so, or confined and may serve for food, it is otherwise even at common law. For of deer so inclosed in a park, which may be taken at pleasure; fish in a trunk or net, or as it should seem in any other inclosed place which is private

private property, and where they may be taken at the pleasure of the owner at any time; pheasants or partridges in a mew; young pigeons, or old ones when shut up; young hawks in a nest, and even old ones, or falcons reclaimed and known by the party to be so; larceny may be committed. The same as to peacocks: so of swans marked and pinioned, or swans unmarked, if tame, kept in a mote, pond, or private river: but if they range out of the royalty, it is no felony to take them though marked, because it cannot be known that they belong to any person. Nor can larceny be committed of the eggs of these, or of hawks; because the stat. 11 Hen. VII. c. 17. has appointed a less punishment, namely, fine and imprisonment. But the stealing a stock of bees, seems to be admitted to be felony.

By 1 Hen. VII. c. 7. the unlawful hunting in any forest, park, or warren, being private property, in warlike array, by night or with painted faces, &c. was made felony. But the use of that statute, which seems principally to have been levelled at public disturbers of the peace, is superseded by the more general law of the black act, 9 Geo. I. c. 22. whereby if any person armed with sword, fire-arms, or other offensive weapons, and having his face blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed, wherein any deer are usually kept; or in any high road, open heath, common, or down; or shall unlawfully hunt, wound, kill, destroy, or steal, any red or fallow deer; or rob any warren, or place where conies or hares are usually kept; or steal fish out of any pond or river; or if any person, whether armed and disguised, or not, shall unlawfully hunt, wound, kill, destroy, or steal any red or fallow deer, fed or kept in any inclosed places in any of the king's forests or chases, or in any park, paddock, or grounds enclosed, where deer are usually kept, or shall forcibly rescue any person lawfully in custody for any of such offences, or shall by gift or promise procure any to join in any such unlawful act; such offender shall be guilty of felony without benefit of clergy. He may be tried in any county in England, but corruption of blood, &c. is saved. That part of the clause which relates to hunting, killing, or stealing red, or fallow deer, in any forest, chase, or inclosed place, where deer have been usually kept, not being armed and disguised, is repealed by 16 Geo. III. c. 30. which punishes the first offence with a pecuniary forfeiture, and a second with transportation for seven years. Although the statute only mentions red and fallow deer, yet the cross breeds are within its provisions.

It has been doubted whether at common law, larceny can be committed

committed of fish in a pond; but by 5 Geo. III. c. 14. if any person enter into any park or paddock, fenced in or enclosed, or into any garden, orchard, or yard, belonging to any dwelling-house, through which any river or stream of water shall run, or wherein shall be any river, stream, pond, or other water; and shall steal or destroy any fish bred or kept in any such river, &c. or shall be aiding or assisting therein, or receive or buy any such fish, knowing them to be stolen, he shall, if indicted within six calendar months before any judge, or justices of jail delivery for the county, be transported for seven years. An offender discovering and convicting an accomplice is intitled to a pardon. If any person shall take, kill, or destroy, or attempt to take, kill, or destroy, any fish in any river or stream, pond, pool, or other water, not being in such places as before mentioned, but in any other inclosed ground, private property; he shall, on summary conviction, forfeit 5*l.* to the owner.

With respect to conies and hares, the general result of several statutes appears to be, that by 3 James I. c. 13. if a wrong doer shall hunt, drive out, take, or kill, any coney in the night time, in any inclosed ground kept for that purpose, which was such at the time of passing the act, or has become so since, by the king's licence, he may be prosecuted for the misdemeanor at the assizes or sessions. By the 22 and 23 Chas. II. c. 25. if he chase, take, or kill any coney, either by day or night, in any ground used for keeping conies, whether inclosed or not, he is liable to be convicted before a magistrate. The 5 Geo. III. c. 14. gives jurisdiction to the justices of oyer and terminer, and jail delivery, where the offence of *taking or killing* any coney is committed in the night in any ground usually appropriated to the keeping of them whether enclosed or not; and gives a discretionary power of transporting the offender. And if any such place where hares or conies are kept is robbed at any time, by any offender armed and disguised, it is made felony without benefit of clergy, by the black act.

But there are some animals, which, though they may be reclaimed, yet are considered of so base a nature that no larceny can be committed of them; such as bears, foxes, monkeys, cats, ferrets and the like. And the same rule applied to dogs; but now, by statute 10 Geo. III. c. 18. the stealing of dogs is made punishable upon conviction before two justices, by forfeiture for the first offence of not less than 20*l.* nor more than 30*l.* with costs, and for default to be committed not less than six nor more than twelve calendar months. A renewed offence subjects the party to a fine not exceeding 50*l.* nor less than 30*l.* with costs; or to imprisonment not exceeding eighteen nor less than twelve months.

Of domestic animals, such as sheep, oxen, horses, and the like; or of domestic creatures which are fit for food, as hens, ducks, geese, turkeys, peacocks, &c.; and also of their eggs, larceny may be committed. Concerning some of these, particular provision has been made. By statutes 1 Ed. VI. c. 12.; 2 & 3 Ed. VI. c. 33. the stealing of horses, mares, geldings, foals, and fillies, is felony without clergy; and by 31 Eliz. c. 12. accessories are in the same situation with principals. By 14 Geo. II. c. 6. to steal sheep, or to kill them and take away parts, leaving the residue, is felony without clergy; and by 15 Geo. II. c. 34. the words *other cattle*, which had been used in the preceding act are declared, to extend to any bull, ox, steer, bullock, heifer, calf, and lamb, as well as sheep, and to no other cattle whatsoever.

In order to prevent the trade of boiling horse-flesh from facilitating the practice of stealing cattle, the 26 Geo. III. c. 71. enacts, that no person shall keep any house or place for the purpose of slaughtering or killing any horse, ass, ox, sheep, hog, goat, or other cattle which shall not be killed for butcher's meat, without first obtaining a licence at the general quarter sessions for the county or place where the trade is to be carried on. The vestries of parishes wherein such slaughter-houses are situate, are to appoint inspectors, to whom the proprietors are to give notice in writing, containing an accurate description of all cattle intended to be slaughtered, and of the time when. If the inspector has reason to believe that any beast of which he has received notice is in a sound or serviceable state, or has been stolen or unlawfully obtained, he may prohibit the slaughtering for eight days, and advertise the circumstances, twice or oftener in the newspapers, and unless the owner of the animal shall satisfactorily assure the inspector that it was sent to be killed with his consent, the keeper of the house shall pay the expence of advertising. Persons bringing cattle to be slaughtered, or bringing them already dead to be flayed, and not giving a satisfactory account of themselves, and of the means by which they became possessed of the cattle, may be taken before a justice of peace and committed. Persons using any such slaughtering house without a licence, are to be transported for seven years. Those who destroy, bury, or rub with corrosive matters any hides for the purpose of disguising them; or offending against the act in any particular not expressly provided for, to be guilty of misdemeanors, and punished by fine, imprisonment, or corporal punishment. Persons making false entries in any book, directed by the act to be kept, forfeit not more than twenty, nor less than ten pounds, or are to be committed to hard labour not exceeding three months nor less than one. They who lend any

house, barn, or place for such slaughtering, without licence, are to be imprisoned for the like period ; and witnesses refusing to attend justices forfeit ten pounds, or are committed for the like term.

It being felony to steal the animals themselves, it is also felony to steal the product of them, though taken from them while living. Thus milking cows at pasture, and stealing the milk, was holden felony by all the judges. So, pulling the wool from the sheep's backs is felony ; it being understood in this, as in the other instance, that the fact is done fraudulently and feloniously, and not merely from wantonness or frolic ; which must be collected from concurrent circumstances, such as the quantity taken, the use to which it is applied, the behaviour of the party, &c.

Such are the principal things in respect of which larceny may be committed.

THE PLACE in which the offence is perpetrated is material, as many statutes have been passed, more for the purpose of protecting particular places from being plundered, than of securing any specific property preserved there : although attention must still be paid, in some instances, to the general nature of the property taken. Larceny from the house is not distinguished at common law from simple larceny, unless where it is accompanied with the circumstance of breaking the house at night, when it falls under the description of burglary. This offence may be effected, as well where the delivery of a thing out of the house is obtained by an artifice from any person therein at the time, as where the thief himself enters and takes it. In robbery and burglary the value is immaterial, for those were capital offences before the statute allowing clergy ; and under different statutes clergy is ousted generally ; but in all other cases of larceny committed in a dwelling-house, where clergy is taken away, the value must exceed a shilling, or it is not a capital offence ; and now, by various acts of parliament, the benefit of clergy is taken away from larcenies committed in a house in almost every instance. The multiplicity of those provisions creates some confusion, but the general result is, that benefit of clergy is denied on the following domestic aggravations of larceny :

I. In Larcenies above the value of 12d. committed,

1. In a church or chapel, with or without violence or breaking.

2. In a booth or tent in a fair or market, in the day or night, by violence or breaking, the owner or some of his

his family being therein; though they need not be put in fear.

3. By robbing a dwelling-house in the day time, (which robbing implies a breaking;) any person being therein, though not put in fear.

4. In a dwelling house, by day or night, without breaking, any person being therein and put in fear; which amounts in law to a robbery: and in both these last instances, accessaries before the fact are excluded clergy.

II. *In Larcenies to the value of 5s. committed,*

1. By breaking any dwelling-house, or any out-house, shop, or warehouse, thereto belonging, in the day time, though no person be therein: which extends to aiders, abettors, and accessaries before the fact.

2. By privately stealing goods, wares, or merchandizes, in any shop, warehouse, coach-house, or stable, by day or night; though the same be not broken open, and though no person be therein: which extends likewise to such as assist, hire, or command the offence to be committed.

III. *In Larcenies to the value of 40s.*

In a dwelling house or its out-houses, though not broken open, and whether any person be therein or not, unless committed by apprentices under the age of fifteen, against their masters: this also extends to aiders and assistants.

This abridged statement is given by Mr. East as an index to a great number of statutes, and a great variety of cases which it would be tedious here to enumerate.

By the 24 Geo. II. c. 45. all persons who shall feloniously steal any goods, wares, or merchandize, of the value of 40s. in any ship, barge, lighter, boat, or other vessel or craft, on any navigable river, or in any port of entry or discharge, or in any creek belonging to such river or port, or upon any wharf or quay adjacent; or who shall be present, aiding and assisting in committing any such offences, shall be excluded from the benefit of clergy. The penalty of plundering wrecks has already been mentioned.

The consideration to whom THE PROPERTY in the things stolen belongs is very material. Some things are not the subject of property at all, or only so *ratione loci* or *privilegii*; and others are only such *sub modo*, that is, where some person has acquired

acquired a special dominion over them. But with respect to things which are the regular subjects of property, felony may be committed in stealing them, though the owner be not known; for the guilt of the thief is the same. He may therefore be charged in the indictment with having stolen the goods of a person to the jury unknown; or with having received goods stolen by a person unknown. And in such case the king shall have the goods. But if the owner be really known, an indictment alleging the goods to be the property of a person unknown, would be improper; the prisoner must be discharged of that indictment, and tried upon a new one, for stealing the goods of the owner by name; and in the prosecutions for stealing the goods of a person unknown, some proof must be given sufficient to raise a reasonable presumption that the taking was felonious or *invito domino*; for it is not enough that the prisoner is unable to give a good account how he came by the goods.

The EVIDENCE necessary to support indictments for larceny, is best considered by adverting to the various modes of defence by which such charges are palliated or denied.

1. *Denial of the Fact.* It may be laid down generally, that wherever the property of one man, which has been taken from him without his knowledge or consent, is found upon another, it is incumbent on that other to prove how he came by it; otherwise the presumption is, that he obtained it feloniously. This, like every other presumption, is strengthened, weakened, or rebutted by concomitant circumstances, too numerous in the nature of the thing to be detailed. But the bare finding in one's possession property of the same kind which another has lost, unless that other can from marks or other circumstances satisfy the jury of its identity, is not in general sufficient evidence that the goods were feloniously obtained. Yet, where the fact is very recent, so as to afford reasonable presumption that the property could not have been acquired in any other manner, the court are warranted in concluding it is the same, unless the prisoner can prove the contrary. The confession of the prisoner is often adduced in this case; but on this, as upon other occasions, care must be taken to ascertain, that such confession was not procured by promise or threat; as in such cases it ought not to be received.

2. *That the Goods were taken on a Claim of Right.* Goods may be so taken by the party's own immediate act, or by the act of the law through his means; but if it appear that a writ or process is issued with the mere intent of gaining possession

possession of the effects of another, without the least foundation for a claim, it is felony.

3. *By Mistake or Accident.* Analogous to the taking upon a claim of right, is the taking by mistake arising from heedlessness, or from mere accident; but in this case the mistake must be very apparent, and the conduct of the party free from all attempts to disguise, conceal, or clandestinely dispose of the property.

4. *On taking as a Trespasser, without Fraud.* The taking may amount only to a trespass, and the circumstances in such case must guide the judgment. As where a man takes another's goods openly before him or before other persons, otherwise than by apparent robbery; or having possessed himself of them, avows the fact before he is questioned.

5. *Finding.* Another defence is, that the goods were found. This is connected in great measure with the first mentioned mode of defence. It is the most trite excuse in cases of larceny, and in general the least founded. Still if the fact be so, it is no felony; although it may be attended with all those circumstances which usually prove a taking with a felonious intent; such as denying or secreting it.

6. *On a Possession by Delivery of a third Person.* It is a common mode of defence to state a delivery by a person unknown, and of whom no evidence is given: little or no reliance can consequently be had upon it. But this defence, however improbable, is entitled to consideration, since it is, if true, a valid defence.

7. The most comprehensive and most intricate line of defence is, *That the goods were delivered to the prisoner by or on behalf of the owner; or were taken with his consent or approbation.* For if it be proved that there was no trespass or felonious intent in taking the goods, no subsequent conversion of them can amount to felony. This defence involves, first, those cases where persons being previously apprised of an intention to commit a larceny, give facilities in order to detect and secure the thieves; the conviction or acquittal in these cases depends upon very minute circumstances. Second, where property is obtained with the consent of the owner, but extorted by threats of charging him with crimes; this is generally considered as robbery from the person. Third, cases where the inquiry is, whether the owner, in making the delivery, intended to part with the *property*, or only with the *possession* of the thing delivered; for if he parted with the *property* to the prisoner, by whatever fraudulent means he was induced to give the credit, it cannot be felony; but if the possession only was delivered, then it is material to inquire whe-

ther the delivery was by way of charge, or as a general bailment, or for some special purpose. In this class are considered the cases of obtaining property by fraudulent appearances; by promises to return and pay for things delivered; by preconcerted fraudulent gaming; by ordering goods on promise to pay for them on delivery, and then retaining them without payment, and numerous other artifices by which money and goods are obtained. In this defence are also included the cases of those who, having got bills into their possession for the pretended purpose of discounting, keep or make away with them; of those who draw money or goods from the ignorant or credulous under pretext of finding valuable jewels or other things, in which the dupe supposes he is to share. In the consideration of this mode of defence, which applies also to a vast variety of other cases, the mode and intent of the delivery of the goods, or money alleged to be stolen, are often very material. The general result of the cases is, that if a person obtain the goods of another by a lawful delivery without fraud, although he afterwards convert them to his own use, he cannot be guilty of felony. As, if a tailor has cloth delivered to him to make clothes with; or a carrier receives goods to carry to a certain place; or a friend is intrusted with property to keep for the owner's use; which they afterwards feverally embezzle. So if plate is delivered to a goldsmith to work or weigh, or as a deposit, his conversion of it will not be felony; but if such delivery is obtained by any fraud or falsehood with intent to steal, though under pretence of a hiring, or even a purchase; if in the latter case no credit was intended to be given, delivery in fact by the owner will not pass the legal possession, so as to save the party from the guilt of felony. But if the property were intended to pass by the delivery, there can be no felonious taking.

8. *Taking through necessity* is a common defence, but its want of validity has been noticed in a preceding page.

LARCENY AND ROBBERY FROM THE PERSON. The crime of larceny from the person may be aggravated in two different manners. 1st. Where the thing is taken from the person *privately without the knowledge of the owner*; 2d. Where the person from whom it is taken is *put in fear* at the time, or the taking is accompanied with circumstances of *violence, threat, or terror*, which are sufficient grounds for presuming fear; in which case it assumes the denomination of robbery.

The first of these offences is derived from the stat. 8 Eliz. c. 4. which recites, that "whereas certain evil disposed persons, commonly called cut-purses or pick-purses, but indced by the laws
laws

laws of this land very felons and thieves, do confeder together, making among themselves as it were a brotherhood or fraternity of an art or mystery to live idly by the secret spoil of the good subjects of this realm; and as well at sermons and preachings of the word of God, and in places and times of doing service and common prayer, in churches, chapels, closets, and oratories, and not only there, but also in the prince's palace and presence, and at the places and courts of justice, and at the times of ministering of the laws in the same, and in fairs, markets, and other assemblies of the people, and at the time of doing execution, &c. do, without regard to any place, time, or person, &c. under the cloak of honesty by their outward apparent countenance and behaviour, subtilly, privily, craftily, and feloniously, take the goods of divers subjects from their persons, by cutting and picking their purses, and other felonious slights and devices, &c." and enacts that no person indicted or appealed for feloniously taking of any money, goods, or chattels from the person of any other *privily without his knowledge*, in any place whatsoever; and thereupon found guilty, shall be admitted to benefit of clergy. The statute is confined to him who actually commits the fact, and extends not to accessaries before or after, nor even to those who are present aiding and abetting. Wherefore if there is an accomplice present, and it can not be told which of them took the goods, neither can be convicted of the capital part of the charge. There must be an actual taking from the person; taking in his presence is not sufficient, as it is in robbery. The stealing of notes, &c. is within the statute. The goods stolen must be above the value of 12d.; otherwise clergy is not ousted, as in robbery; for the statute was not intended to alter the nature of the crime, but only to exclude clergy where it was before necessary to procure the benefit of it.

Any sort of secret or sudden taking from the person, without putting him in fear, and without terror or open violence, seems within the act; though some small force be used by the thief to possess himself of the property; provided there be no resistance by the owner, or injury to his person; and the circumstances of the case shew that the thing was taken, not so much against, as without, his consent. But in no case where the property is obtained by any struggling or violence to the person, does the offence fall within this statute.

It was formerly holden that persons asleep or drunk were not within the protection of the act, which speaks of places of public resort and the like, where persons were supposed to

use ordinary caution, and not expose themselves by carelessness or misbehaviour to these accidents. Yet subsequent cases solemnly considered have put a more enlarged construction upon the statute, so as to protect all persons at least who have not exposed themselves to such a loss by their own negligence or misbehaviour.

The indictment must lay the offence to have been done *privily without the knowledge* of the party, in exact pursuance of the words of the statute, otherwise the prisoner will be intitled to his clergy. And so he is if the value be not laid as well as proved to be above 12*d.* And in this, as in other aggravated larcenies, the prisoner may be acquitted of the capital part of the charge, and found guilty of simple larceny.

ROBBERY. The next species of aggravated larceny from the person, is robbery; which is a felonious taking of money or goods, to any value, from the person of another, or in his presence against his will, by violence or putting him in fear.

It is sufficient to oust clergy if the thing taken be of any value, though under 12*d.*; for the gist of the offence is the force and terror; but something must be taken; for an assault with intent to rob is an offence of a different and inferior nature.

In robbery it is sufficient if the property be taken in the presence of the owner; it need not be taken immediately from his person, so that there be violence to his person, or putting him in fear.

As to the sort of violence necessary to be proved, where the property is obtained in that manner, it is to be observed that no sudden taking of a thing unawares from the person, as by snatching any thing from the hand or head, is sufficient to constitute a robbery, unless some injury is done to the person, or unless there is some previous struggle for the possession of the property. Even if the pretence is lawful or indifferent, if the true intent is to steal, under the definition before given, and the possession is obtained by force and violence from the person of the owner, or in his presence, it amounts to robbery. This crime may also be constituted by putting in fear as well as by force; or perhaps in strictness, it may be said that fear will supply the place of force. Yet it is not necessary that actual fear should either be laid in the indictment, or strictly and precisely proved; provided the property be taken with such circumstances of violence or terror, or threatening by word or gesture, as would in common experience induce a man to part with it from an apprehension of personal danger; for the law,

law, *in odium spoliatoris*, will presume fear where there appears to be so reasonable a ground for it. If a man be knocked down without previous warning, and stripped of his property while senseless, he can with no propriety be said to be put in fear; and yet that would undoubtedly be robbery. So a colourable gift, which in truth was extorted by fear, amounts to a taking and trespass in law. As if a person with a drawn sword, or other circumstances of terror indicating a felonious intent, beg alms of another, who gives it him through mistrust and apprehension of violence, the offence is the same notwithstanding the pretence. So it is whether there were any weapon drawn or not; or whether it were an offensive weapon; or whether the person assaulted delivered his money upon the other's command; or afterwards gave it him upon his ceasing to use force, and asking it for alms; for the owner was put in fear by the assault, and there remained a reasonable ground for its continuance. The same rule holds, although the thing taken were not really within the original contemplation of the robber, nor the object of his pursuit at the time. As where a man assaulted a woman with intent to commit a rape, but on her giving him money, took it, and being alarmed by persons coming up, desisted from his original purpose and ran off. If a person by force or threats compels another to give him goods, and by way of colour obliges him to take, or if he offers, less than the value, it is robbery.

It is difficult to define exactly what the nature of the fear implied in this crime must be; but it is clear, that on the one hand, the fear is not confined to an apprehension of bodily injury; and on the other hand, it must be of such a nature as in reason and common experience is likely to induce a person to part with his property against his will, and to put him as it were under a temporary suspension of the power of exercising it, through the influence of the terror impressed; in which case fear supplies, as well in sound reason, as in legal construction, the place of force, or an actual taking by violence, or assault upon the person. Thus, therefore, the extorting of money by threats of future violence, of pulling down or burning a person's house, or charging him with an unnatural crime, have all been considered as robberies.

GRAND AND PETIT LARCENY, AND THEIR PUNISHMENT.
In grand larceny, the value of the property taken must be above 12d. If it be only of that value, or under, it is but petit larceny: and in these prosecutions the valuation ought to be reasonable; for when the stat. of Westm. 2. c. 25. was made, silver was but 20d. an ounce. The nature of the offence is the same

same in both; they are both felony, though they differ in the degrees of their punishment, and in some other particulars. At common law the judgment for grand larceny is of death, but the party may pray the benefit of his clergy, unless in cases where he is ousted by particular statutes; and he shall also lose his goods. In petit larceny, the offender was only subject to whipping, or other corporal punishment less than death, by which is now understood imprisonment: and in this case he also forfeits his goods on conviction. But in robbery, whatever be the value, the judgment is death. Beside these, several other modes of punishment have been introduced by various statutes. Persons to whom clergy is allowed, may, for their further correction, be imprisoned for any time not exceeding a year, in the discretion of the court; or they may be burnt in the hand, or committed to the house of correction, for not less than six months, nor more than two years; or, instead of these, the justices may order them to be transported for seven years; or, instead of transportation for seven years, to hard labour on board the hulks for not less than one year nor more than five; but if the term of transportation was fourteen years, he may be placed on board the hulks for seven. Instead of burning in the hand, a moderate fine may be imposed, or public or private whipping, not more than three times, may be ordered.

ACCESSARIES. Though it is true that in larceny and robbery all those who come to steal or rob are principals, although the fact may only be committed by one of them, and are subject to the same punishments; yet it is otherwise as to larcenies deprived of clergy under particular circumstances, such as the case of stealing privately from the person, under the stat. 8 Eliz. c. 4.; and the 39 Eliz. c. 15. for breaking and entering a house, &c. and stealing to the value of 5s.; [though in the latter case the deficiency is supplied by the stat. 3 & 4. W. & M. c. 9:] in which cases the abettors at the fact are not excluded from clergy, but remain liable only to the penalties of simple larceny. In petit larceny there can be no accessories either before or after, although it is felony; because it is not such as judgment of death ought by law to be passed upon it, but procurers and counsellors are principals, as in trespasses. With respect to grand larceny, the common law respecting accessories stands upon the same footing as in other felonies.

RECEIVERS OF STOLEN GOODS. At common law no receivers were accessories but such as received or harboured the thief himself: the receiving of the stolen goods only, did not
make

make a man accessory, without taking a reward to favour the felon's escape. If the owner received back his goods simply and without any agreement to favour the felon in his prosecution, it was lawful: but if he received them upon an agreement not to prosecute, or to prosecute faintly, it was called *theft bote*, and punishable by imprisonment and ransom. But now by statute 3 W & M. c. 9. if any person shall buy or receive any goods or chattels, knowing the same to be stolen, he shall be deemed, and incur the same punishment as, an accessory after the fact. The 5 Ann. c. 31. enacts to the same effect in general words. And by 4 Geo. I. c. 11. persons convicted of receiving or buying goods, knowing them to be stolen, may be transported for fourteen years; but they must pray the benefit of the statute, or they will be capitally convicted under that of Anne. Before these acts, the receiving of stolen goods was merely a misdemeanor; but now the misdemeanor is merged in the felony; and therefore a prosecution for a misdemeanor only would be illegal and improper. This however is to be understood of those cases only where the principal can be come at, so as to give an opportunity of convicting the receiver as an accessory to the felony. For till the stat. 1 Ann. the receiver could not be prosecuted or punished at all before the principal thief was tried and convicted; on this account the receiver, who is generally the employer and patron of the thief, often escaped with impunity; by keeping the thief out of the way. To remedy this inconvenience, the stat. 1 Ann. st. 2. c. 9. enacts, that it shall be lawful to prosecute every person buying or receiving goods, knowing them to be stolen, as for a misdemeanor; to be punished by fine and imprisonment, although the principal felon be not before convicted, which shall exempt the offender from being punished as accessory, if the principal shall be afterwards convicted; and by 5 Ann. c. 31. it is provided, that if any such principal felon cannot be taken, yet it shall be lawful to prosecute the receiver, as for a misdemeanor. Upon a conviction under the last mentioned clauses of the statutes of Anne as for a misdemeanor, the punishment is by fine, imprisonment, or corporal punishment, at the discretion of the judge, as in cases of misdemeanors; but the 4 Geo. I. c. 11. which subjects receivers to transportation for fourteen years, does not extend to prosecutions under the statutes of Anne for a misdemeanor only; and where the principal is amenable to justice, the receiver ought still to be prosecuted as an accessory to the felony, and not for a misdemeanor only.

These statutes however left the law imperfect, for under that of 5th Anne, a receiver could not be convicted after the
 prin-

principal felon had been tried and executed; but the 22 Geo. III. enacts, that in all cases whatsoever, where any goods or chattels (except lead, iron, copper, brass, bell-metal, and solder) shall have been feloniously taken or stolen; whether the offence of the principal shall amount to grand larceny, or some greater offence, or to petit larceny, only; (except where the person or persons actually committing the felony shall already have been convicted of grand larceny, or of some greater offence; every person who shall buy or receive any such goods and chattels, knowing them to have been stolen, shall be deemed guilty of a misdemeanor, and punished by fine, imprisonment, or whipping, as the court of quarter sessions (who are thereby empowered to try such offender) or as any other court before whom he shall be tried, shall think fit; although the principal felon be not before convicted, and whether he is amenable to justice or not. And in cases where the felony actually committed shall amount to grand larceny, or to some greater offence, and where the person actually committing it shall not before be convicted, such offender shall be exempted from being punished as accessary, if such principal felon or felons shall be afterwards convicted. One justice of the peace, on complaint made before him on oath, that there is reason to suspect that stolen goods are knowingly concealed in any dwelling house, or other place, may, by warrant under his hand and seal, cause every such place to be searched in the day time; and the persons knowingly concealing the stolen goods, or in whose custody they are found, being privy thereto, shall be deemed guilty of a misdemeanor, (and may be brought before a justice of peace, and made amenable to answer the same by warrant), and punished in the manner aforesaid. This not to repeal any former law for the punishment of such offenders.

The legislature has also made particular provisions in a variety of cases against receivers of certain stolen goods. By 29 Geo. II. c. 30. every person who shall buy or receive any lead, iron, copper, brass, bell-metal, or solder, knowing the same to be unlawfully come by; or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal, or solder, by suffering any door, window, or shutter, to be left open, or unfastened between sun-setting and sun-rising for that purpose; or shall, buy or receive the same, or any of them, at any time, in any clandestine manner, from any person whatsoever; shall, being thereof convicted by due course of law, although the principal felon has not been convicted, be transported for fourteen years. By 21 Geo. III. c. 69. similar punishment is extended to those who receive stolen pewter pots, or any pewter in any form or shape

shape whatever, knowing the same to be stolen or unlawfully come by. So by 2 Geo. III. c. 28. buying or receiving any goods, stores, or things belonging to any ship or vessel in the river Thames, knowing the same to be stolen or unlawfully come by. By 10 Geo. III. c. 48. every person who shall buy or receive any jewels, or gold or silver plate, or watches, knowing them to have been stolen by burglary, or feloniously taken by a robbery on the high way, shall be triable as well before as after conviction of the principal felon, whether he shall be in or out of custody, and transported for fourteen years. And persons indicted for these offences are by 39 and 40 Geo. III. to plead *instanter*, and not allowed time to traverse, as is usual in cases of misdemeanors.

As the laws against stealing *naval stores* are very strict, so are those against the embezzlement of them. By 9 and 10 William, c. 41. no persons but those authorized by contracting with the king's principal officers or commissioners of the navy, ordnance, or victualling office, for his majesty's use, may mark any stores of war, or naval stores whatsoever, with the marks generally used to his stores, on pain of forfeiting the goods and 200*l.* one half to the king, the other to the informer. A similar penalty attends those, who are convicted on indictment of concealing such goods, or having them found in their possession; unless upon the trial they produce a certificate under the hand of three or more of the king's officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods as they shall then be indicted for, and the occasion and reason of such goods coming to their hands or possession. The 9 Geo. I. c. 8. extends the same penalty to those who have in their custody timber and other articles similarly marked. By the 17 Geo. II. c. 40. the justices have power to cause the offenders to be publicly whipped, and committed to some house of correction, or public workhouse, to be kept to hard labour for three months. But by 39 and 40 Geo. III. c. 89. the selling and delivering, or receiving, or having in custody and concealing such stores, without a proper certificate, subjects the party to be transported for fourteen years. And the punishment of offenders against the stat. 9 and 10 Wm. c. 41. is increased by pillory, whipping, and imprisonment. They who wilfully and fraudulently destroy, beat out, deface, or erase wholly or in part, any mark whatsoever denoting the property of his majesty, in or to any stores; or procure others so to do, for the purpose of concealing his majesty's property in such stores; are to be deemed guilty of felony, and transported for fourteen years. Persons not transported for their first offence, committing a second, are to be transported for fourteen years,

and if they return, hanged. But in all cases the court may mitigate, or commute such punishment to pillory, public whipping, fine, or imprisonment, or by all, or any one, or more of such ways and means, as the court shall think fit; one moiety of the fine (if any imposed) going to his majesty, and the other to the informer; and also to order such offender to be imprisoned until the fine is paid. Informers, in all cases where summary conviction is not given, receive 20*l.*, over and above their share of penalties. Against minor offences, several inferior penalties are denounced; and by the 39 and 40 Geo. III. several misdemeanors are created, and a summary jurisdiction given to principal officers or commissioners of the navy, or justices of the peace, with an appeal however to the quarter sessions; and the act does not prevent proceeding against the parties as receivers of stolen goods, provided they be not twice prosecuted for the same offence.

To prevent the influence which the impunity of receivers gave them over thieves, the stat. 4 Geo. I. c. 11. enacts, that whenever any person takes money or reward, directly or indirectly, under pretence or on account of helping any person to any stolen goods or chattels; every such person, unless he apprehends the felon, and causes him to be brought to trial, and gives evidence against him, shall be guilty of felony, and suffer according to the nature of the felony committed in stealing the goods, as if he had himself stolen them. And they who discover, apprehend, and prosecute to conviction such offenders are intitled to a reward of 40*l.* On this act the noted Jonathan Wild was convicted and executed; the principal felon being examined as a witness on the part of the crown.

For the same purpose another statute 25 Geo. II. c. 36. enacts, that any person publicly advertising a reward, with "no questions asked," for the return of things which have been stolen or lost, or that such reward shall be paid without seizing or making inquiry after the person producing the things stolen or lost; or promising or offering in any such public advertisement to return to any pawn-broker or other person any money so paid or advanced by way of loan on such things, or any other sum of money for the return of them; and any person printing or publishing such advertisement; shall respectively forfeit 50*l.* to any person who will sue for the same.

TRIAL. The general rule in trials for larceny and robbery, as in other cases, is that the offenders must be tried in the same county or jurisdiction wherein they were committed. In ascertaining which, it is necessary to advert to two leading principles, from which certain deviations are exceptions.

1. The

1. The possession of goods stolen by the thief is a larceny in every county into which he carries them ; because the legal possession still remaining in the true owner, every moment's continuance of the trespass and felony amounts to a new caption and asportation ; and therefore if a man steals goods in one county, and carries them into another, he may be indicted or appealed of larceny in the latter county ; though he can be only charged with robbery in the county where the force or putting in fear was.

2. Where clergy is ousted on circumstances of aggravation, such circumstances must *all* be proved to have happened within the county in which the offender is tried ; otherwise, the fact of the larceny only being established in that county, he will be intitled to clergy.

RESTITUTION OF GOODS. There are several methods by which the party robbed, or whose goods are stolen, may have restitution ;

1. By an appeal of robbery, or larceny. This process is not particularly described, as it is in a great measure superseded by the remedy next mentioned.

2. The stat. 21 Hen. VIII. c. 11. first gave restitution upon an indictment ; it enacts that if any felon do take away any money, goods, or chattels, from any of the king's subjects, and thereof be found guilty by reason of evidence given by the party so robbed, or owner of the said money, goods, or chattels, or by any other by their procurement ; then the owner shall be restored to his property, and, as well the justices of jail delivery, as other justices before whom any such felon shall so be found guilty, have power to award writs of restitution, in like manner as though the felon was attainted at the suit of the party in appeal. The writ of restitution has fallen into disuse ; but upon the production of the goods at the trial, the court orders them to be restored to the owner, without any inquiry as to fresh suit ; and if not restored, he may maintain trover for them after conviction ; and this notwithstanding a sale in market overt. But restitution can only be had from the person in possession of the goods at the time of, or after, the felon's attainer. Therefore if a party purchase them *bona fide* in market overt, and sell them again before conviction, no action will lie against him for the value, though notice were given to him not to sell.

3. By common law. The necessity of prosecuting and convicting or attainting the felon, in order to have restitution, is only when the property is changed by some intermediate act ; as by the felon's waving it in his flight ; the seizing of it by the king's officers under suspicion of felony ; or by the lord of the manor, or by a sale in market overt. For otherwise the owner may,

at common law, peaceably retake his goods wherever he may find them, without any writ of restitution; but if the owner take them back from the offender with intent to favour him, it is unlawful, and punishable with fine and imprisonment.

4. Special provision has been made for restitution in the instance of horse-stealing, by the 31 Eliz. c. 12. which requires certain entries to be made in the toller's books of the sale of horses in markets and fairs, and enacts, that if any horse shall be stolen, and after sold in any fair or market, and the same sale shall be used in all points and circumstances as aforesaid, that yet, nevertheless, the sale within six months next after the felony shall not take away the property of the owner from whom it was stolen, so as he, or some one for him, claim within six months, at or in the town or parish where the horse, &c. shall be found, before the mayor, or other head officer of a town corporate, or market town, or else before any justice of peace of that county near to the place, and so as proof be made within the next forty days, by two witnesses, before such head officer or justice, that the property was in the claimant, and was stolen from him; the party, his executors, or administrators, may then take again the horse, &c. upon payment, or offer to the party in possession, of so much money as he shall swear that he paid for the same *bona fide* without fraud or collusion.

5. Another method of obtaining, not indeed the very goods stolen, but a compensation for their value, is by suing the hundred wherein the robbery was committed, for neglecting to take the felon, which they are empowered to do by hue and cry. An hue (from *huer*, to shout) and cry, *hutesum et clamor*, is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another. The principal statute, relative to this matter, is that of Winchester, 13 Edw. I. c. 1. & 4. which directs, that from thenceforth every country shall be so well kept, that immediately upon robberies and felonies committed, fresh suit shall be made from town to town, and from county to county; and that the hue and cry shall be raised upon the felons; and they that keep the town shall follow with hue and cry, with all the town and towns near; and so hue and cry shall be made from town to town, until they be taken and delivered to the sheriff. And if the county will not answer for the bodies of such offenders within the space of forty days, the inhabitants of the whole hundred where the robbery shall be done, with the franchises, being within precinct of the same, shall be answerable for the robberies and damages. But these statutes being thought oppressive, in subjecting the hundred to an action, notwithstanding its utmost exertions

exertions to apprehend the offender; and also to force the surrounding hundreds, as well as the party robbed, to contribute their assistance to attain the ends of public justice; it is enacted by the 27 Eliz. c. 18. That the inhabitants of every hundred wherein negligence, fault, or defect of pursuit and fresh suit, after hue and cry made, shall happen to be, shall answer and satisfy by the one moiety of the damages, which shall by force of the said statutes be recovered against the hundred in which the felony was committed. That no hue and cry shall be allowed as lawful, except the same be done and made by horsemen and footmen. That no person robbed shall maintain any action upon these statutes, unless he shall, with as much convenient speed as may be, give intelligence of the felony to some of the inhabitants of some town, village, or hamlet, near unto the place where such robbery shall be committed; and also, first within twenty days next before such action brought, be examined upon oath, before some justice of the peace of the county, inhabiting in the hundred where the robbery was committed, or near the same, whether he knew the felons or robbers, or any of them; and if upon such examination it be confessed that he does know them, he shall, before action brought, enter into bond before the said justice, effectually to prosecute the said robbers by indictment or otherwise. But by 8 Geo. II. c. 16. no person shall, maintain any action upon the above recited statutes, unless he shall, over and above the intelligence required to be given by the statute of Elizabeth, give notice of the robbery committed on him to one of the constables of the hundred, or to some constable or officer of some town, parish, hamlet, village, or tithing, near unto the place where such robbery shall happen, or shall leave notice in writing of such robbery at the dwelling-house of such constable or officer, describing in such notice the felon, or felons, and the time and place of the robbery: and shall also within the space of twenty days next after the robbery committed, cause public notice to be given thereof in the London Gazette, therein likewise describing the felon, or felons, and the time and place of such robbery, together with the goods and effects whereof he was robbed; and shall also, before any such action commenced, go before the chief clerk, secondary, or filazer of the county where the robbery happened, or the clerk of the pleas wherein such action is intended to be brought, or their respective deputies, or before the sheriff of the county where the robbery shall happen, and enter into a bond (gratis) to the high constable, who is authorized to support or defend such action of the hundred, in the penal sum of 100*l.* with two sufficient sureties for securing the due payment of his costs in case

he should be nonsuited, &c.; and no hundred or franchise shall be chargeable by virtue of these statutes, if one or more of the felons be apprehended within forty days next after notice in the London Gazette. By 22 Geo. II. c. 24. no person shall recover against any hundred more than 200*l.* unless the person so robbed shall at the time of the robbery be together in company, and be in number two at least, to attest the truth of the same; nor by 30 Geo. II. c. 3.; and 4 Geo. III. c. 2. unless three persons be present, if the plaintiff is receiver of the land tax.

REWARDS. In order further to encourage the apprehending of certain felons, rewards and immunities are bestowed by divers acts of parliament. The statute 4 & 5 W. & M. c. 8. enacts, that such as apprehend a highwayman, and prosecute him to conviction, shall receive a reward of 40*l.* from the public; to be paid to them (or, if killed in the endeavour to take him, their executors) by the sheriff of the county; besides the horse, furniture, arms, money, and other goods taken upon the person of such robber; with a reservation of the right of any person from whom the same may have been stolen; to which the stat. 8 Geo. II. c. 16. superadds 10*l.* to be paid by the hundred indemnified by such taking. By statutes 6 & 7 W. III. c. 17. and 15 Geo. II. c. 28. persons apprehending and convicting any offender against those statutes, respecting the coinage, shall (in case the offence be treason or felony) receive a reward of 40*l.*; or 10*l.* if it only amount to counterfeiting the copper coin. By 10 & 11 W. III. c. 23. any person apprehending and prosecuting to conviction a felon guilty of burglary, house-breaking, horse-stealing, or private larceny, to the value of 5*s.* from any shop, warehouse, coach house, or stable, shall be excused from all parish offices; and by 5 Ann. c. 31. any person so apprehending and prosecuting a burglar, or felonious house-breaker, (or, if killed in the attempt, his executors,) shall be entitled to a reward of 40*l.* By 6 Geo. I. c. 23. persons discovering, apprehending, and prosecuting to conviction, any person taking reward for helping others to their stolen goods, shall be entitled to 40*l.* By 14 Geo. II. c. 6. explained by 15 Geo. II. c. 34. any person apprehending and prosecuting to conviction such as steal, or kill with intent to steal, any sheep or other cattle specified in the latter of the said acts, shall for every such conviction receive a reward of 10*l.* Lastly, by 16 Geo. II. c. 15. and 8 Geo. III. c. 15. persons discovering, apprehending, and convicting felons and others being found at large during the term for which they are ordered to be transported, shall receive a reward of twenty pounds.

PIRACY. Next to the robberies already described, Piracy would be considered; but it is already treated of in this vol. p. 275.

CHEATS. In forming a judgment who are cheats, it is necessary to keep in mind the distinction formerly noticed, whether the property, or only the possession was parted with by the party deceived. If only the possession was surrendered, it has already been shewn to be a larceny, if the person who gains it with an intent to steal, fulfils that intent by retaining or disposing of the goods. If the absolute property were intended to be passed by the delivery, but such delivery were obtained by means of a *false token or pretence*, the case can only be reached in the first instance by a prosecution for a cheat, either at common law, or by help of the stat. 33 Hen. VIII. or in the instance of a false pretence by the 30 Geo. II. Where indeed the possession is honestly obtained upon a contract or trust in the first instance, the subsequent dishonest conversion of it is no other than a breach of trust, for which the party injured has a civil remedy. To this there is an exception, where the privity of contract is determined; that is, where the property has been committed to a person for a limited time or use, and he, instead of returning it according to his engagement, and the reasonable expectation of the owner, sells or makes away with it. The fraud or dishonesty, to become the subject matter of a criminal charge at common law, must be such as affects the public, such as is public in its nature, calculated to defraud numbers, to deceive the people in general, and against which ordinary care or prudence is not sufficient to guard.

Cases on this subject are precisely regulated by two statutes; the first is that of 33 Hen. VIII. c. 1. which enacts, that if any person falsely and deceitfully obtain any money, goods, or other things, by colour and means of any false token, or counterfeit letter made in any other man's name, he shall, if convicted before the lord chancellor, or before the justices of assize in their circuits, or justices of the peace in their general sessions, or by action in any of the king's courts of record, suffer imprisonment, pillory, or other corporal pain, except pains of death, as shall be adjudged by the court, saving to the party grieved his civil remedy; and the justices of assize, or two justices of the peace, (one being of the quorum) may commit or bail offenders to the assizes or general sessions to answer the same. A false "*privy token*" within the statute has generally been taken to denote some real visible mark or thing, as a key, a ring, &c.; a mere false affirmation or promise is certainly not such; and

although *writings*, generally speaking, may be considered as *tokens*, yet they must be such as are made in the names of *third* persons ; whereby some additional credit may be gained to the party using them. The false token must be such as is calculated to gain the party some additional credit and confidence beyond his own assertion, or that which is resolvable into such. This inquiry however is become less important from the following act.

In furtherance of the provisions of the above statute, it is further enacted by 30 Geo. II. c. 24. that all persons who knowingly and designedly by false pretence or pretences shall obtain from any person money, goods, wares or merchandizes, with intent to cheat or defraud them of the same, shall be deemed offenders against law and the public peace; and the court before whom they shall be tried shall, on conviction, order them to be fined and imprisoned, or put in the pillory, or publickly whipped, or transported for the term of seven years. And any justice of peace, before whom such person is brought, may commit or bail him, to answer the complaint at the next general or quarter sessions, or next sessions of oyer and terminer; and shall bind over the party complaining to prosecute in a reasonable sum not less than double the amount of the money or goods fraudulently obtained if they shall exceed 20*l.* in value; and the certiorari is taken away.

The term "*false pretences*" is of great latitude, and was used to protect the weaker part of mankind, because all are not equally prudent: it seems difficult therefore to restrain the interpretation of it to such false pretences only against which ordinary prudence cannot be supposed sufficient to guard; but still it may be a question whether the statute extends to every false pretence, either absurd or irrational upon the face of it, or such as the party has at the very time the means of detecting at hand; or whether the words which are general shall be construed co-extensively with the cheat actually effected by means of the false pretence used. These may perhaps be matters proper for the consideration of the jury, with the advice of the court.

There are various other provisions by statute for the punishment of particular kinds of frauds or cheats; such as those by goldsmiths, &c. in working up plate, embezzlements and frauds by servants, by officers of the bank, and of other public companies, by persons in the post-office, by manufacturers, by lodgers, by persons intrusted with the king's naval and military stores, and by those intrusted with ships and goods at sea. Frauds committed by bankrupts will be considered

dered hereafter. Others it is sufficient here barely to refer to, as the stat. 6 Geo. I. c. 18. against entering into public subscriptions for certain schemes of commerce, &c. which is made indictable as a nuisance; and the stat. 37 Geo. III. c. 143. which gives a summary jurisdiction to justices of the peace in petty sessions to punish retailers in whose possession false weights and balances shall be found. Fraudulent conveyances are provided against by the 13 Eliz. c. 5. and by the 27 Eliz. c. 4.

At common law the punishment for a cheat is, as in other cases of misdemeanor, by fine, imprisonment, or, further, by infamous corporal pain in aggravated cases. How this has been confirmed or extended by the two statutes of Hen. VIII. and Geo. II. has been already shewn. And where goods have been obtained from another by mere fraud, the court has no power of awarding restitution on conviction of the offender, as in cases of felony.

FORGERY. To *forge*, (a metaphorical expression borrowed from the occupation of the smith), means, properly speaking, no more than to *make* or *form*; but in law it is always taken in an evil sense, and therefore *forgery* at common law denotes a *false* making, which includes every alteration of, or addition to, a true instrument; a making *malò animo*, of any written instrument for the purpose of fraud and deceit. This offence is punishable as a misdemeanor at common law; but it has been enhanced in a variety of instances by different statutes, upon which it is now most usual to prosecute.

To constitute Forgery, the *intent* must be deceitful and fraudulent. The very *making*, with such fraudulent intent and without lawful authority, of any instrument which at common law or by statute is the subject of forgery, is of itself a sufficient completion of the offence even before publication, and of consequence before any actual injury sustained: for though publication be the medium by which the intent is usually made manifest, yet it may be proved as plainly by other evidence. And by the statute law, the publication, with knowledge of the fact, is for the most part made a substantive offence. Forgery may even be committed by a party's making a false deed in his own name; as if he make a subsequent deed of feoffment, as of a date prior to a former deed of his own, conveying the same lands, thereby attempting to give the last an operation which in justice it ought not to have, in order to defraud his own feoffee. So, if a bill of exchange payable to A. or order get into the hands of another person of the
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same

same name with the payee, and such person, knowing that he is not the real payee in whose favour it was drawn, indorse it for the purpose of fraudulently possessing himself of the money, he is guilty of forgery. So, if one put off a note subscribed with his own name as the note of another, it is a false uttering and publishing within the statute. Making a fraudulent insertion, alteration, or erasure in any material part of a true instrument, although but in a letter, and even if it be afterwards executed by another person, he not knowing of the deceit; or the fraudulent application of a true signature to a false instrument, for which it was not intended, or *vice versa*; are as much forgeries, as if the whole instrument had been fabricated; for any such alteration gives it a new operation; as by altering the date of a bill of exchange after acceptance, whereby the payment was accelerated. The wilful insertion of a legacy in another's will unknown to him prior to and at the time of its execution is a forgery. But a bare nonfeasance or omission is said not to be such; as by omitting a legacy out of a will which one is directed to draw for another; unless, as some have holden, such omission makes a material alteration in other parts of the will. In all cases the thing made must be false; for certainly a man cannot be guilty of forgery merely by passing himself off for the person whose real signature appears, although for the purpose of fraud, and in concert with such real person; for there is no false making.

To what *instruments* the crime of forgery was applied at common law seems to have been very indistinctly marked. It was never doubted but that it extended to the falsification of records and other instruments of a public nature; as a parish register, a privy seal, a licence from the barons of the exchequer to compound a debt, a certificate of holy orders, a protection from a member of parliament, or the like. It is equally clear that it extended to private deeds or instruments under seal, but how far beyond these is somewhat doubtful.

But the various modes of forgery are amply provided against by a great variety of statutes, of which a brief mention will be made under certain heads.

1. *Records.* The stat. 3 Hen. VI. c. 12. provides against the stealing and avoiding any records, or any part of them, in any of the courts at Westminster, declaring such acts to be high misdemeanors. The word *avoid* is taken in a large sense, and includes rasing, clipping, or any other kind of avoiding: and not only any alteration of a record whereby the judgment is *reversed*, (by which is to be understood *annulled*) but also whereby it is so made void as to be reversible, is within the statute;

statute; and that, whether made before or after judgment, or whether or not afterwards amended by the court.

2. *Public Funds and Stocks of public Companies.* The statutes 8 Geo. I. c. 22. and 31 Geo. II. c. 22. protect from forgery all the public funds then or since established by the authority of parliament. The stat. 31 Geo. II. c. 22. and 4 Geo. III. c. 25. extend the same protection to the parliamentary funds or stocks of public companies, and the 8 Geo. I. c. 22. especially includes the South-Sea-Company, as the stat. 9 Geo. I. c. 12. and other acts especially include particular orders and public annuities. To these many others are added for the protection of various other chartered companies; as the British Plate-glass, and Globe Insurance; the objects of forgery are specified with great minuteness, and the offence is in all cases declared to be felony without benefit of clergy.

3. *Notes and other Securities of the Bank of England.* The laws respecting these are mentioned in this vol. p. 165.

4. *Stamps.* Stamps denoting the payment of certain duties are required by various acts of parliament to be affixed on a multiplicity of written or printed documents. And for the purpose of protecting the revenue from fraud, in counterfeiting, uttering, or vending the same knowingly, the respective acts always contain a clause declaring the forgery of them to be felony, without benefit of clergy. Another general provision in regard to offences against the stamp laws is in the stat. 12 Geo. III. c. 48. which enacts, that if any person shall write or engross either the whole, or any part of any writ, mandate, bond, affidavit, or other writing, matter, or thing whatsoever, in respect whereof any duty is or shall be payable on the whole, or any part of any piece of vellum, parchment, or paper, whereon there shall have been before written any other writ, bond, mandate, affidavit, or other matter or thing, in respect whereof any duty was or shall be payable as aforesaid, before such vellum, parchment, or paper shall have been again marked or stamped according to the said acts; or shall fraudulently erase or scrape out the name of any person, or any sum or date; or fraudulently cut, tear, or get off, any mark or stamp, from any piece of vellum, parchment, paper, playing cards, outside paper of any parcel or pack of playing cards, or any part thereof, with intent to use such stamp or mark for any other writing, the offender, and every person abetting or assisting him, shall be transported for a term not exceeding seven years. And if he escape, break prison, or return from transportation before the

expiration of his time, he shall suffer death as a felon, without benefit of clergy, and shall be tried for such felony in the county where he is apprehended. But any fraudulent using of a legal stamp, which many of the abovementioned offences may be deemed to be, is made capital by subsequent statutes, the 23 Geo. III. c. 58. and 27 Geo. III. c. 13.

Forging the stamps on gold or silver plate is by the 31 Geo. II. c. 32. made felony, without benefit of clergy; but the 38 Geo. III. c. 69. by which gold wares were allowed to be manufactured at a lower standard than was before allowed, viz. at the standard of eighteen, instead of twenty-two carats, in a pound troy, enacts, that if any person shall forge, cast, or counterfeit the mark or stamp, he shall be transported for seven years.

5. *Official Papers, Securities, and Documents.* Forging testimonials of soldiers or mariners; memorials of registry of deeds and wills, and of bargains and sales, in Yorkshire and Middlesex; documents relating to suitors in chancery; Mediterranean passes; marriage registers and licences; seamen's letters of attorney, bills, tickets, certificates, assignments, last wills, and other powers or authorities; or certificates to obtain letters of administration to seamen, and other documents to receive wages; prefines; exchequer bills, orders, assignments; Irish debentures; lottery tickets or shares, or licences to keep lottery offices; and contracts for the redemption of the land-tax; are by various statutes felonies without benefit of clergy. Forging franks of letters, felony punished by transportation for seven years. Forging receipts for duties on legacies subjects the offender to a penalty of 500*l.*; forging the stamp is, like other stamps, a capital offence. Making or subscribing false certificates of naval or military stores, so as unduly to authorize persons to have them in their possession, is a misdemeanor punishable with a fine of 200*l.* and whipping and imprisonment.

6. *Private Papers, Securities, and Documents.* The 5 Eliz. c. 14. enacts, that if any person shall forge or make, or cause or willingly assent to be forged or made, any false deed, charter, or writing sealed, court-roll, or the will of any person in writing, to the intent that the estate of freehold or inheritance of any person in any lands or hereditaments, freehold or copyhold, or their right, title, or interest in the same, may be molested, defeated, or charged; or shall pronounce, publish, or shew forth in evidence, any such false and forged writing as true, knowing the same to be forged, he shall pay to the party

party grieved his double costs and damages, and be set upon the pillory in some open market town, or other open place, and there have both his ears cut off, and also his nostrils slit and cut, and seared with a hot iron, so as they may remain as a perpetual mark of his falsehood, and shall forfeit to the queen the whole issues and profits of his lands and tenements during his life, and shall suffer perpetual imprisonment. If the forgery affected only an estate or interest for a term of years, the offender was to forfeit to the party grieved his double costs and damages, and to be also set on the pillory, and to have one of his ears cut off, and also be imprisoned one year. Persons once convicted committing a second offence, were declared guilty of felony without benefit of clergy.

The above statute of Elizabeth has now nearly fallen into disuse since the passing of the 2 Geo. II. c. 25. which extends to all deeds and wills, upon which the prosecution is easier, and the punishment capital in the first instance. By this statute, which is made perpetual by 9 Geo. II. c. 18. if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, &c. or willingly act or assist in the false making, &c. any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, or any acquittance or receipt either for money or goods, with intent to defraud any person whatsoever, (and by stat. 31 Geo. II. c. 22. with intent to defraud any corporation whatsoever :) or shall utter or publish as true, any false, forged, or counterfeited deed, &c. with intent to defraud any person, (or corporation,) knowing the same to be false, forged, or counterfeited; every such person shall be deemed guilty of felony without benefit of clergy. The stat. 7 Geo. II. c. 22. (made to supply the defects of the former act which it recites, and further that no punishment is inflicted by the said act on such as commit the offences thereafter set forth), enacts, that if any person shall falsely make, alter, forge, or counterfeit; or cause or procure to be falsely made, &c.; or willingly act or assist in the false making, &c. any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill, or other security for payment of money, or delivery of goods, with intent to defraud any person whatsoever, (and by stat. 18 Geo. III. c. 18. with intent to defraud any corporation,) or shall utter or publish as true any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for payment of money or delivery of goods, with intention to defraud any person, (or corporation,) knowing

knowing the same to be false, altered, forged, or counterfeited, every such person shall be deemed guilty of felony without benefit of clergy. In the stat. 7 Geo. II. there is no express saving of corruption of blood, as in the others: and by the 2 Geo. II. c. 25. the act is not to extend to Scotland.

It is said to be no way material whether a forged instrument is made in such a manner as, were it true, it would be of any validity or not: but this must be understood, where the false instrument carries on the face of it the semblance of that for which it is counterfeited, and is not illegal in its very frame. Upon this ground it has been adjudged that the forgery of a protection in the name of one as being a member of parliament, who in truth was no member at the time, is as much an offence at common law as if he were so. In order to constitute forgery, it is not necessary there should be a perfect resemblance between the false instrument and that which is intended to be imitated: if they be so far alike that the deception is calculated to impose upon persons in general, it is sufficient; though it would not impose on persons having particular experience in such matters. But though a similarity to a common intent be sufficient, yet it is necessary that the forged instrument should in all essential parts have upon the face of it the similitude of a true one; so that it be not radically defective and illegal in the very frame of it.

It is clear that the making of any false instrument which is the subject of forgery with a fraudulent intent, although in the name of a non-existing person, is as much a forgery as if it had been made in the name of one who was known to exist, and to whom credit was due. It makes no difference whether the making of the false instrument or signature be really necessary to the advantage so fraudulently attempted to be obtained by the party, or gain him any additional credit; it is sufficient if it be made with such fraudulent intent.

In trials for forgery, a consideration which seems to have involved in it the greatest difficulty is, how far personating the true man, or assuming a fictitious character at the time, will affect the offence. On this point the distinctions are extremely nice; but the following general principles are laid down.* 1st. That if a person gives a note or other security as his own, and the credit thereupon be personal to himself, without any relation to another, his signing it with a fictitious name may indeed be a cheat, but will not amount to forgery; for in that case it is really the instrument of the party whose act it purports to be, and the creditor had no other security in view. But, 2^{dly}. That if a note is given in the name of another person either really existing or represented so to be, and in that light it obtains

obtains a superior credit, or induces a trust which would not have been given to the party himself, it is then a false instrument, and punishable as forgery. 3dly. That the law would be the same, though the note or security were thus falsely subscribed in the presence of him who lent his money upon it, if the impostor and the party whose name is made use of were both strangers to him; for then he could not know that such impostor was not really the person whose name he assumed, and therefore the other would be equally deceived. But how far the first proposition above laid down is to be taken in its utmost latitude, has been the subject of much difference of opinion.

PUBLISHING OR UTTERING. To pronounce or publish, says lord Coke, is when one, by words or writing, pronounces or publishes the instrument to any other, as true. It extends, no doubt, to every other manner of exhibiting it as a true instrument; but in order to constitute such an offence it must be done with knowledge of the forgery; which knowledge may come by the relation of another, as well as by the party's own observation. Such relation is not conclusive evidence of the fact of knowledge; it must be left to the jury upon the whole matter; for possibly there might be circumstances which might invalidate or weaken the credit of the person relating it, or of his relation itself, though it afterwards appear to be true. This is an offence distinct from, though connected with, the act of false making, or forgery; and therefore it is the common practice to indict persons who knowingly utter forged instruments as principals; and there may be accessaries before to such offence.

ACCESSARIES. In forgery, it is laid down generally in the books that all are principals; and that whatever would make a man accessory before in felony, will make him a principal in forgery; but this, must be understood of forgery at common law, and where it is considered only as a misdemeanor.

INDICTMENT. It is essentially necessary to an indictment for forgery that the instrument alleged to be forged should be set forth in words and figures; though there is no technical form of words for expressing that it is to be set forth. In setting forth, however, the tenor of an instrument, a mere literal variance will not vitiate the indictment. If any part of a true instrument be altered, the indictment may lay it to be a forgery of the whole instrument. It is a general rule applicable to this as to other offences, that an indictment on a statute must in general set forth the charge in the very words of

of the statute describing the offence; for equivalent words are not sufficient.

WITNESSES. It has been the uniform practice to reject every witness who is interested at the time of his examination, in setting aside the instrument alleged to be forged, upon which, if genuine, he would be liable to be sued. Incompetency arising from interest in the event of the verdict, where it really exists, extends to preclude the party from giving other evidence, as well as that of negating the hand-writing which tends to prove the fact of the forgery. Therefore the executor of a person, whose promissory note had been forged, was rejected as a witness to prove what the prisoner said to him when he tendered the note for payment. But if the party whose hand-writing is forged has no interest in invalidating the instrument in question, there is no doubt but he is a competent witness: and some cases appear to go the length of establishing, that, being the best, he is the only witness, if living, to prove the forgery: but that is not confirmed by the current of authorities to such an extent; though the testimony of such an one, when disinterested, must doubtless be the most satisfactory of any, on the question of his own hand-writing. And whatever might have been the interest of the party, in the transaction at first, there is no doubt, but if he be divested of such interest, by release, payment, or otherwise, at the time he is ready to be sworn; it is no objection to his competency, whatever it may be, under certain circumstances, to his credit. Therefore a release from the holder of a promissory note to the supposed drawer in whose name it was forged, there being no other name on the note to whom the drawer could be liable, made him a competent witness to prove the forgery of his hand-writing upon an indictment against the prisoner, who had passed it off to such holder without any indorsement. In *Dr. Dodd's case*, the earl of Chesterfield, the supposed obligor of the forged bond, was admitted to disprove his signature, on producing a release from Fletcher, the supposed obligee.

JUDGMENT, AND ITS CONSEQUENCES. In a variety of instances, which have been mentioned, the forgery of particular instruments has been made felony by statutes, for the most part excluding the benefit of clergy. In all other cases the offence must be taken to rest in misdemeanor, punishable at common law by fine, imprisonment, and such other corporal punishment, as the court in their discretion shall award; and by statute also with certain punishments of the same kind in particular instances, which have also been pointed out. One of the consequences of any judgment for this offence is an incapacity

incapacity to be a witness, until restored to competency by the king's pardon under the great seal. The effect of the stat. 12 Geo. I. c. 29. with respect to attornies, solicitors, or law agents, has been mentioned.

FALSELY PERSONATING ANOTHER. This offence, committed for the purpose of cheating another, by imposing on him a false name or character, for the purpose of gaining either a new credit, or preventing detection, is in its nature nearly allied to forgery, with which it is usually accompanied, to give it efficacy. They have been accordingly classed together by the legislature in various instances, with respect to personating the proprietors of government stocks, or the stocks of the different public companies; all which are made capital felonies. By referring to the terms of the different statutes, it will be seen that the actual completion of the fraud, by the transfer of the stock, or the receipt of the dividends, is not necessary to constitute the offence; it is sufficient if the offender falsely and deceitfully personates any true and real proprietor, *and thereby transfers, or endeavours to transfer, the stock, or receives, or endeavours to receive the money*; in which case he is, by the several acts, made guilty of felony without benefit of clergy. In these cases, the real proprietor can be examined as a witness to prove the identity of the person intended to be defrauded. Personating sailors, or out-pensioners at Greenwich hospital, with intent to receive their wages, prize money, or pensions, is also felony without clergy; but in these cases, there must be some evidence to shew that there was such a person of the name and character assumed, who was either entitled, or might, *prima facie* at least, be supposed to be entitled to receive on board such a ship the wages, &c. attempted to be acquired.

By stat. 21 Jas. I. c. 26. all persons who shall acknowledge or procure to be acknowledged, any fine, recovery, deed inrolled, statute, recognizance, bail, or judgment, in the name of any other persons not privy or consenting to the same, shall be adjudged felons, without benefit of clergy; (saving corruption of blood and loss of dower). The act does not extend to any judgment acknowledged by any attorney of record for any person against whom any such judgment shall be given. This act extended only to proceedings in the courts themselves: and therefore by stat. 4 W. and M. c. 4. the chief justices of the king's bench and common pleas, and the chief baron may respectively, together with one other judge of their respective courts, appoint commissioners (other than common attornies and solicitors) in every shire and county within England, Wales, &c. to take recognizances of special bail or bail pieces in actions and suits depending in their several courts. And any judge
of

of assize in his circuit is empowered to take such recognizances. Then any persons who shall, before any person so empowered, represent or personate any other, shall be adjudged felons, and suffer as felons. Under the act of James, it has been holden that the bare personating of bail before a judge at chambers, or the acknowledging thereof in another name, is no felony, unless the bail be filed; but only a misdemeanor.

In all other cases, not made felony by statute, the bare fact of personating another, though for the purpose of fraud, can in no instance amount to more than a cheat or misdemeanor at common law, and is punishable as such.

ARSON. Arson, which was felony at common law, and anciently punished with death, is described to be the malicious and voluntary burning the house of another. Many statutes have passed on this subject, most especially affecting the benefit of clergy; but the crime at this day rests principally on the 9 Geo. I. c. 22. commonly called the black act, which provides that if any person shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood; or shall forcibly rescue any person being lawfully in custody for any such offence; or shall, by gift or promise of money or reward, procure any to join him in any such unlawful act; he shall be adjudged guilty of felony, without benefit of clergy; and offenders not surrendering on proclamation are also ousted of clergy. By the 9 Geo. III. c. 29. persons burning or setting fire to any mill are declared felons without benefit of clergy, but must be prosecuted within eighteen months. By further provision in the same statute, the offender may be required by order of the king in council to surrender within forty days, in default of which the court may award execution.

To constitute this offence there must be a malicious and voluntary burning; otherwise it is not felony, but only a trespass; and therefore no negligence or mischance amounts to it. As, if an unqualified person by shooting at game happen to set fire to the thatch of a house; or even if a man were shooting at the poultry of another, unless he meant to steal it, in which case, the first intent being felonious, the party must abide all the consequences. But by 6 Ann. c. 31. any servant *negligently* setting fire to a house or out-house shall, on conviction before two justices of the peace, forfeit 100*l.* or be sent to the house of correction for eighteen months. Further, it is necessary that the house, or some part of it, or some out-house, forming a parcel of it, though not contiguous, be burnt or set fire to; for the malicious burning of goods in the house does not amount to felony. The house must also, in a strict sense, be the house

house of another person, otherwise the offence is only a misdemeanor; but even the burning of a man's own house in a town, or so near to other houses as to create danger to them, is a great misdemeanor, and may be punished with fine and imprisonment, pillory and finding sureties.

Accessaries after, stand upon the same footing as in other felonies, and are not deprived of clergy by any statute, except after an order of the king in council, as above mentioned; in which case, after the time limited in the order is expired, such as conceal, aid, abet, or succour such offender, knowing him to have been so charged and required to surrender, are ousted of clergy. The *trial* may be in any county in England.

MALICIOUS AND FRAUDULENT MISCHIEF. Beside arson, many other offences may be classed under this head, some of which have already been mentioned, as mayhem, spoiling cloaths, and some modes of robbery; and others will form separate objects of consideration. In this division, however, some other malicious injuries will be noticed, as provided against by particular statutes, both local and general.

In the Northern Counties. By the 43 Eliz. c. 13. for restraining incursions, robberies, burning of towns and houses, in Cumberland, Northumberland, Westmorland, and Durham, and the imprisonment and cruel treating of the inhabitants, unless redeeming themselves by great ransoms, called *black mail*, it is enacted, that whosoever shall without lawful authority take any of the queen's subjects against their will, and carry them out of the said counties, or to any other place within any of the said counties, or detain, force, or imprison them to ransom them; or to make a prey or spoil of their persons, or goods, upon deadly feud or otherwise: or whosoever shall be privy, or assisting unto any such offence, or procure it to be committed; or whoever shall take, receive, or carry to the use of himself, or any other, money, corn, cattle, or other consideration, commonly called black mail, for the protecting or defending of him or them, or his or their lands or goods, from such thefts; or whosoever shall give any such money, &c. called black mail, for such protection; or shall wilfully burn, or aid, procure, or consent to the burning of any barn or stack of corn or grain, within any of the said counties or places, and shall be convicted at the assize or general sessions, shall be adjudged felons, without benefit of clergy. Authority is given to the court by a subsequent statute of the 18 Chas. II. c. 3. to execute or transport for life certain of those offenders, known in Northumberland by the name of *moor troopers*.

Burning Heath, &c. By 4 & 5 W. and M. c. 23. it is enacted, that no person, on any mountains, hills, heaths, moors, forests, chafes, or other wastes, shall burn between the 2d February and 24th June, any gine, ling, heath, furze, goss, or fern, upon pain of being committed to the house of correction, not exceeding one month, nor less than ten days, to be whipped and kept to hard labour. The 28 Geo. II. c. 19. rather limits than extends the objects of this offence, by omitting the word heath, and uses the words forests or chafes only, instead of the more general words in the former act; but it gives a summary jurisdiction to one or more justices of the peace, and empowers them to inflict a penalty as well as to imprison.

By Hunters. By the 42 Geo. III. c. 107. if any person shall wilfully course, or hunt, or take in any slip, noose, toil, or snare, or kill, wound, or destroy, or shoot at, or otherwise attempt to kill, wound, or destroy, or shall carry away, any red or fallow deer, kept or being in the inclosed part of any forest, chase, purlieu, or ancient walk, or any inclosed park, paddock, wood, or other inclosed ground, wherein deer are, have been, or shall be usually kept, without the consent of the owner, or without being otherwise duly authorized, or shall be knowingly aiding, abetting, or assisting therein, he shall be deemed guilty of felony, and transported for seven years. The same offence in any unincluded part subjects the offender to a penalty of 50*l.*; and if a keeper, or otherwise intrusted with the care or custody of deer, to 100*l.*, the second offence, to transportation for seven years.

By 16 Geo. III. c. 30. if any person carrying any gun, or other fire arms, or any sword, staff, or other offensive weapon, comes into any forest, chase, purlieu, or ancient walk, or into any inclosed park, paddock, wood, or other ground where deer are usually kept, be the same inclosed or not, with intent unlawfully to shoot at, course, or hunt, or to take in any slip, noose, toil, snare, or other engine, or to kill, wound, destroy, or take away, any red or fallow deer; it is lawful for every ranger, or keeper, or person intrusted with the care of such deer, to seize and take from him all such guns, fire-arms, slips, or other engines, and all dogs; and if any such person beats or wounds the ranger or keeper, his servants or assistants, or attempts to rescue any person in their lawful custody, he shall be adjudged guilty of felony, and transported for seven years.

GAME. Under this division may be ranked an offence constituted by a variety of acts of parliament; an offence, which the sportsmen of England seem to think of the highest import-

importance; and against which associations have been formed all over the kingdom. It is the offence of destroying such beasts and fowls, as are ranked under the denomination of *game*: which, upon the old principle of the forest law, is a trespass and offence in all persons alike, who have not authority from the crown to kill game (which is royal property), by the grant of either a free warren, or at least a manor of their own. The game laws have also inflicted additional punishments (chiefly pecuniary) on persons guilty of this general offence, unless they are of the rank and fortune particularly specified. All persons, therefore, of what property or distinction soever, that kill game out of their own territories, or even upon their own estates, without the king's licence expressed by the grant of a franchise, are guilty of the first original offence, of encroaching on the royal prerogative; and those who do so, without having such rank or fortune as is generally called a *qualification*, are guilty not only of the original offence, but of the aggravations also, created by the statutes. The *qualifications*, or more properly the *exemptions*, from the penalties inflicted by the statute, are, 1. The having a freehold estate of 100*l.* per annum. 2. A leasehold for ninety-nine years of 150*l.* per annum. 3. Being the son and heir apparent of an esquire, or person of superior degree. 4. Being the owner, or keeper of a forest, park, chase, or warren. For unqualified persons transgressing these laws, by killing game, keeping engines for that purpose, or even having game in their custody; or for persons (however qualified) that kill game, or have it in possession, at unreasonable times of the year, or unreasonable hours of the day or night, on Sundays, or on Christmas-day, there are various penalties assigned, corporal and pecuniary, by different statutes; on any of which, but only one at a time, the justices may convict in a summary way, or (in most of them) prosecutions may be carried on at the assizes. These penalties consist for the most part in seizures of guns, dogs, and other animals and engines, in searching for which extraordinary powers are given; in pecuniary fines, amounting in some cases to 5*l.* for an offence; in imprisonment sometimes for three months; and in whipping. By 28 Geo. II. c. 12. no person, however qualified to *kill*, may sell or expose to sale any game, on pain of like forfeiture as if he had no qualification. By the 25 Geo. III. c. 50. and 31 Geo. III. c. 21. every person, who shall go in pursuit of game without taking out a certificate from the clerk of the peace of the county or district where he resides, shall forfeit 20*l.* The clerk of the peace shall receive for the certificate 3*s.* 4*d.*; and the certificate shall

be in force from the day of its date till the first of July next following. And any person producing his certificate to another, who is in pursuit of game, may demand of him to shew his certificate, and if he does not, he may then demand of him his name and place of abode, which if he refuses to give, or gives a false name or place of residence, he shall forfeit 5*l*. The stamp on the certificate is 3*l*. 3*s*.; but it does not, as some erroneously suppose, amount to, or stand instead of a qualification.

In respect to timber and other trees, woods, coppices, &c. and other wood in general; roots, plants, &c. By 37 Hen. VIII. c. 6. persons wilfully barking any apple, pear, or other fruit trees, forfeit to the party aggrieved treble damages, and to the king 10*l*. And the 1 Geo. I. st. 2. c. 48. after providing, that if any person shall maliciously break down, cut up, pluck up, throw down, bark, or otherwise destroy, deface, or spoil any timber tree, fruit tree, or any other tree, the party injured shall recover damages against the inhabitants of the parish, village, &c. or place where such tree, &c. shall be so maliciously broken down, &c.; and reciting, that whereas divers woods, underwoods, and coppices, have been heretofore and lately set on fire, or burnt, to the great discouragement of planting; enacts and declares, that if any person shall maliciously set on fire or burn any wood, underwood, or coppice, or any part thereof, he shall be adjudged guilty of felony; and be liable to penalties and forfeitures as other felons.

Also the 6 Geo. I. c. 16. enacts, if any person shall, either by day or night, cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any wood-springs, or springs of wood, trees, poles, wood, tops of trees, underwoods, or coppice woods, thorns, or quicksets, without the consent of the owner, or of the persons chiefly intrusted with the care and custody thereof; or shall break down, throw down, level, or destroy any hedges, gates, posts, stiles, railings, walls, fences, dikes, ditches, banks, or other inclosures of such woods, wood-ground, parks, chases, or coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quicksets, the party grieved shall recover damages against the parish, &c. in the same manner and form as for dikes and hedges overthrown by persons in the night, or at another season when they are supposed not to be espied, as is provided by the stat. 13 Edward I. st. 1. c. 46.; and further, that if any person or persons in a riotous, open, tumultuous, or in a secret and clandestine manner, commit nearly the same offences, two justices of the peace, or the justices in open sessions, upon complaint to them made by any inhabitant of the parish

parish or place, or of the owner of the property injured, may cause such offender or offenders to be apprehended, and hear and finally determine the offence, and if they convict any person or persons, they may inflict the penalties and punishments in the said act of the first of Geo. I. The 29 Geo. II. c. 36. which enables the proprietors of wastes, woods, and pastures, wherein any others have common of pasture, with the assent of the major part in number and value of the owners, &c. to inclose the same for the growth and preservation of timber or underwood, and gives an appeal in certain cases to the parties grieved, enacts, that if any person, after the time of appealing, shall either by day or by night unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any trees growing within such inclosure, the owner shall have such remedy, satisfaction, and recompence from the inhabitants of the parishes, &c. or places adjoining to such inclosures, and recover such damages against them as is directed for dikes and hedges overthrown by the 13 Edw. I.; unless the offender or offenders shall be convicted of such offence within the space of six months. And any two justices of the peace of the county wherein the offence is committed, or the justices in sessions, upon complaint to them, may cause every such offender to be apprehended, and inflict the like penalty and punishment on them as is directed by the 6 Geo. I. c. 16. If any person shall unlawfully cut, take, destroy break, throw down, bark, pluck up, burn, deface, spoil, or carry away, any tree growing in any waste, wood, or pasture, in which any person, or body politic or corporate, has right of common, he may be in like manner convicted of such offence, and shall incur the like penalty.

By the black act also, any person, whether armed and disguised or not, who shall maliciously cut down, or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit; or shall forcibly rescue any person in custody for such offence; or by gift or promise procure any to join him in any such unlawful act; shall be adjudged guilty of felony without benefit of clergy.

The 6 Geo. III. c. 36. provides for the preservation of timber, and timber-like trees, whether in forests, chases, and other open grounds, or in woods, plantations, or inclosed grounds, and against the plunder of nursery grounds, by enacting, that the breaking, spoiling, destroying, injuring, or carrying away any of them to the value of 5s. shall be deemed felony, and punished with transportation for seven years; and aiders, abettors, purchasers, and receivers are to be punished

in the same manner as the principals. Another act passed in the same session directs, that persons destroying or injuring trees in his majesty's forests or chases, shall for the first offence forfeit 20*l.* and costs, or be committed, not less than six nor more than twelve months; for the second, forfeit 30*l.* and costs, or be imprisoned not less than twelve nor more than eighteen months; and for a third offence, transported for seven years. The same statute declares that all oak, beech, chestnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees, shall be deemed timber trees within its meaning and provision. To which the stat. 13 Geo. III. c. 33. adds poplar, alder, larch, maple, and hornbeam. This second act of the 6 Geo. III. and which is c. 48. also generally enacts, that every person who shall pluck up or cut, spoil or destroy, or take or carry away, any root, shrub, or plant, out of fields, nurseries, gardens, or other cultivated lands, shall, on conviction before one justice of the peace, for the first offence forfeit not exceeding forty shillings, together with costs; for the second, not exceeding 5*l.* with costs, and for the third, may be transported for seven years. Also persons who shall go into woods, underwoods, or wood grounds, and there cut, lop, top, or spoil, split down or damage, or otherwise destroy, any kind of wood or underwood, poles, sticks of wood, green sticks, or young trees, or carry or convey away the same, or shall have them in their custody, and shall not give a satisfactory account how they came by them, shall, on like conviction, for the first offence forfeit not exceeding forty shillings with costs; for the second, not exceeding 5*l.* and costs; and for the third, shall be deemed incorrigible rogues, and punished as such. It is remarked as an extraordinary circumstance, that these two acts should have passed in the same session, enacting such different provisions on the same subject. And there are many other circumstances in the statutes above referred to, which render it evident that they were framed in haste, and passed with some degree of negligence.

By 37 Hen. VIII. c. 6. if any person maliciously do burn, or cause to be burned, any heap of wood of any other person, prepared, cut, and felled, for making of coals, billets, or talwood, he shall not only forfeit unto the party grieved, treble damages, to be recovered by action of trespass, but also shall forfeit to the king 10*l.* in the name of a fine.

Burning Wains or Carts laden with Goods. The last mentioned statute subjects to the same punishment any person who shall maliciously burn any wain or cart laden with coals or
other

other goods or merchandizes belonging to any other person.

Destroying Fences and Inclosures. Some provisions against the destruction of the fences of wood ground have been already adverted to in the stat. 6 Geo. I. c. 16. which refers to the remedy provided by the 13 Edw. I. st. 1. c. 46. This latter ordains, that where one having right to approve does then levy a dike or an hedge, and some by night, or at another season when they suppose not to be espied, do overthrow the hedge or dike, and it cannot be known by verdict of the assize or jury who did it, and men of the towns near will not indict such as be guilty of the fact, such towns shall be distrained to levy the hedge or dike at their own cost, and to yield damages. By 9 Geo. III. c. 29. if any person shall wilfully set fire to, burn, demolish, pull down, destroy, or damage, any fence erected or made for dividing or inclosing any common, waste, or other lands, in pursuance of any act of parliament, he may be transported for seven years. The prosecution to be commenced within eighteen months after the offence. By 16 Geo. III. c. 30. if any person shall pull down or destroy the pale or pales, or any part of the walls of any forest, chase, or other ground where red or fallow deer are kept, he shall forfeit 30*l.* on conviction before one justice of the peace, who, in case of non-payment, has power to commit. The prosecution must be commenced within twelve calendar months after the offence committed. Offenders of this description were also by the 5 Eliz. c. 21. subjected to treble damages to the party grieved, and to imprisonment for three months, and finding sureties for seven years.

Breaking down Mounds of Fish-ponds. The chief protection against this offence is in the black act, which declares, that if any person, whether armed and disguised, or not, shall maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; or shall forcibly rescue any person in custody for such offence; or shall, by gift or promise of reward, procure any to join him in such unlawful act, he shall be guilty of felony without benefit of clergy. Clergy is also ousted from offenders not surrendering themselves upon proclamation; and from such as conceal, aid, abet, or succour them after the time expired for their surrender. And they may be tried in any county in England. The stats. 37 Hen. VIII. c. 6. and 5 Eliz. c. 21. have provided punishments for this offence, and they are not repealed; but as the black act is more effectual, it has superseded them in use.

Cutting Hop-binds. By 6 Geo. II. c. 37. this offence is felony without benefit of clergy; and by 10 Geo. II. c. 32. all the provisions in the black act, for bringing offenders and

abettors to justice ; making satisfaction to the parties injured ; and encouragement of those who apprehend delinquents, are extended to this offence.

Obstructing the Passage of Grain. By 36 Geo. III. c. 9. it is enacted, that if any person shall beat, wound, or use any other violence, to deter or hinder others from buying corn, or grain, in any market or other place within the kingdom ; or shall unlawfully stop or seize any wheat, flour, meal, malt, or other grain, in the way to or from any city, market town, or place in the kingdom ; or shall break, cut, or destroy any waggon, cart, or other carriage, wherein any such wheat, or other grain, shall be loaded, or the harness of any horse drawing or carrying the same ; or shall take off from any such carriage, or drive away, kill, or wound any such horse ; or beat or wound the driver, with intent to stop such wheat, or other grain ; or shall, by cutting off the sacks, or otherwise, scatter or throw it abroad, or take or carry away, destroy, spoil, or damage the same ; all such persons, being convicted before any two justices of the peace of the county, wherein the offence shall be committed, or before the justices in open sessions (who are authorised summarily and finally to hear and determine the same), shall be sent to the common jail, or house of correction, to hard labour, not exceeding three months, nor less than one. If any such person shall offend a second time ; or if any person, with intent to prevent or hinder any corn from being lawfully carried or removed from any place, shall pull down, throw down, or otherwise destroy, any storehouse, or granary, or other place in which such grain shall be kept, or enter such storehouse, or other place, and take and carry away any corn or grain ; or shall throw abroad, or spoil the same, or any part thereof ; or shall enter on board any ship or vessel, and take and carry away, cast, or throw out therefrom, or otherwise spoil or damage any corn or grain ; he shall be adjudged guilty of felony, and transported for seven years. The 11 Geo. II. c. 22. still in force, which was levelled against offences of this description committed, as the title of the act states, with intent to hinder the exportation of corn, has the same provisions with slight variations, and with this further addition, that for the offences created by the first clause of that statute, the justices are also directed to adjudge the offender to be publicly whipped at the time and place before specified. By both acts a conditional remedy is given against the hundred.

Against Cattle. Provisions against maliciously killing, wounding, and injuring the cattle of others, were made by the statutes of Hen. VIII. c. 6. and 22 and 23 Chas. II. c. 37. but that most generally resorted to is the black act, which provides, that

if any person (whether armed or disguised, or not) shall kill, maim, or wound any cattle; or forcibly rescue persons in custody for such offence; or by gift or promise procure any to join him in such unlawful act; he shall be adjudged guilty of felony without benefit of clergy. Offenders not surrendering after order in council, and those who after the time conceal or succour them, are also felons without clergy. The trial may be in any county in England; and aiders and abettors at the fact are also ousted of clergy. In order to bring an offender within this law, the malice must be directed against the owner of the cattle, and not merely against the animal itself.

Manufactures. The 22 Geo. III. c. 40. enacts, that if any person shall, by day or by night, break, or enter by force into any house or shop, with intent to cut or destroy any serge, or other woollen goods in the loom, or any tools employed in the making thereof; or shall cut or destroy any such serges or woollen goods in the loom, or on the rack; or shall burn, cut, or destroy any rack on which any such serges or other woollen goods are hanged to dry; or shall break or destroy any tools used in the making any such serges or other woollen goods, not having the consent of the owner so to do; every such offender shall be guilty of felony without benefit of clergy. The same penalty, in terms varied according to the occasion, is inflicted for offences with respect to velvet, wrought silk, or mixed with any other materials, and other silk manufacture, and with respect to linen or cotton, or linen and cotton mixed with any other materials, or other linen or cotton manufactures, together with the looms and all other implements used in manufacturing them. This act does not repeal one of the 4 Geo. III. c. 37. which declares, that if any person break into any place, with intent to steal, cut, or destroy, any linen yarn, or any linen cloth, or any manufacture of linen yarn, belonging to any manufactory, or the looms, tools, or implements used therein; or shall cut in pieces, or destroy any such goods, either when exposed to bleach or dry; he shall be judged guilty of felony without benefit of clergy.

By stat. 38 Geo. III. c. 17. for twenty-one years, from the 7th May, 1798, and to the end of the then next session, if any person shall by day or night break into any place or building, belonging to the governor and company of the British cast plate-glass manufactory, with intent to steal, cut, break, or otherwise destroy any glass, wrought or unwrought, or any materials, tools, or implements, used in, for, or about the making thereof, or any goods or wares belonging to the said manufactory; or shall steal or cut, break or destroy any such glass, materials,

tools, or implements; he shall be guilty of felony, and transported for seven years, or suffer a less punishment at the discretion of the court.

Highways. All nuisances in highways are indictable at common law: and by the general highway act, 13 Geo. III. c. 78. the damaging of posts, blocks, and great stones, set up to secure causeways, and of the banks which secure and defend the same, and the stones, bricks, or wood, fixed on the parapets or battlements of bridges; as also the pulling down, destroying, or defacing of mile stones or direction posts, is made liable on conviction before a justice of the peace to a penalty not exceeding 5*l.* nor less than ten shillings; and in default of payment the offender is to be committed to the house of correction, there to be whipped and kept to hard labour not exceeding one calendar month nor less than seven days.

Turnpikes. By 13 Geo. III. c. 84. if any person shall, either by day or night, pull down, pluck up, throw down, level, or otherwise destroy any turnpike gate, post, rail, chain, bar, or other fence, set up, or erected, to prevent passengers from passing by without paying any toll; or any house erected for the use of any turnpike gate; or any crane, machine, or engine, made or erected on any turnpike road by authority of parliament, for weighing waggons, carts, or carriages; or shall forcibly rescue any person in custody for such offence, he shall be adjudged guilty of felony, and transported for seven years, or committed to prison for any term not exceeding three years, at the discretion of the court. Any indictment for such offences may be tried in any adjacent county in England, and the hundred must make satisfaction.

Bridges. The malicious destruction or damaging of public bridges is, no doubt, punishable as a misdemeanor, at common law, being a nuisance to all the king's subjects; and the general highway act of the 13 Geo. III. c. 78. subjects to a penalty of 5*l.* on summary conviction before a justice of peace, and, in default of payment, to whipping, imprisonment, and hard labour, every person who shall break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges. In many instances the legislature has made the offence of destroying or damaging particular bridges felony; and in some, has ousted such offender from the benefit of clergy.

Mines and Engines. By 10 Geo. II. c. 32. if any person shall maliciously set on fire any mine, pit, or delf of coal, or cannel coal, he shall be adjudged guilty of felony without benefit of clergy; and all the provisions made in the black act for bringing offenders to justice, and with respect to their aiders, and abettors,

abettors, and with respect to the compensation to the sufferers, are extended to this act.

The 13 Geo. II. c. 21. also enacts, that if any person shall maliciously divert water from any river, brook, water-course, channel, or land-flood, or convey water into any coal-work, mine, pit, or delph of coal, or into any subterraneous cavities or passages, or make any subterraneous passages, with design to destroy, or damage any coal work, &c. or shall for that purpose destroy or obstruct any fough or sewer (which has been a fough or sewer in common for fifty years) made for draining any coal-work, &c.; or shall attempt or continue any such mischievous practice, or aid or assist therein, he shall for every offence forfeit to the party aggrieved treble damages and full costs, to be recovered in any of the courts at Westminster.

By 9 Geo. III. c. 29. if any person shall burn, pull down, destroy, or damage any engine, erected for draining water from collieries, or coal mines, or for drawing coals out of the same, or for draining water from any mine of lead, tin, copper, or other mineral; or any bridge, waggon-way, or trunk, erected for conveying coals from any colliery or coal mine, or staith for depositing the same; or any bridge or waggon-way erected for conveying lead, tin, copper, or other mineral, from any such mine, or shall cause or procure the same to be done, he shall be adjudged guilty of felony, and the court may transport him for seven years. Prosecutions must be commenced in eighteen months after the fact. By 39 and 40 Geo. III. c. 77. if any person shall pull down or fill up, any air-way, water-way, drain, pit, level, or shaft; or damage or destroy any railway, tram-road, or other road leading to or from any coal, or other mine-work; or if any person (not having or *bonâ fide* claiming a right to possess or work the same respectively) shall unlawfully cut, dig, raise, take, or carry away any coal, culm, or other mineral, from any bed, band, vein, or mine, lying and being in waste, open, or uninclosed lands; or shall enter into any level, pit, or shaft, with intent to take any coal, culm, or other mineral; or aid in such offence, he shall be adjudged guilty of a misdemeanor, and imprisoned not exceeding six months. Prosecutions to be commenced in nine months.

Sea-banks, and Banks of Rivers. By 6 Geo. II. c. 37. any person breaking down, or cutting down the bank of any river, or any sea-bank, whereby any lands shall be overflowed or damaged, shall be adjudged guilty of felony without benefit of clergy. And the regulations of the black act with respect to bringing offenders to justice, accomplices, &c. are extended to this offence. By the same statute, if any person shall cut off, draw up, or remove, and carry away any piles, chalk, or other materials,

materials, driven into the ground, and used for the securing any marsh, or sea-walls or banks, in order to prevent the lands lying within the same from being overflowed and damaged, it shall be lawful for one or more justices of the peace residing near the place, to hear the complaint; and the offender upon conviction shall forfeit 20*l.* or in default be committed to hard labour for six months. By 19 Geo. II. c. 22. a summary jurisdiction is given to one or more justices of peace to inquire of, and determine certain offences against the due preservation of havens, roads, channels, and navigable rivers in England, by unloading rubbish, &c. out of vessels within the same, or suffering old hulks to sink there, or not removing such as are stranded.

Locks and other Works on navigable Rivers. The first statute passed on this subject was the 1 Geo. II. c. 19. which reciting, that evil-disposed persons had destroyed turnpike gates, &c. and had threatened the pulling down and destroying of locks, sluices, and flood-gates; for preventing such practices, and for rendering the said acts more effectual, enacts, that if any person shall by day or night break down, &c. or otherwise destroy any turnpike gate, &c. he shall be subject to certain corporal punishment, upon conviction before two justices of the peace, &c. Then by s. 2. if any such person so convicted, shall commit any of the offences aforesaid a second time; or, either by day or night, pull down or demolish any house, erected for the service of any turnpike gate, &c. or wilfully and maliciously break down or demolish any lock, sluice, or flood-gate, erected by authority of parliament, *on any navigable river, for preserving or securing the navigation thereof*, and shall be lawfully convicted of the same respectively upon indictment before any justices of assize, oyer and terminer, or gaol delivery for the county, borough, or corporation where such offence shall be committed; every such person shall be adjudged guilty of felony, and may be transported for seven years. By 5 Geo. II. c. 33. such persons returning from transportation, are guilty of felony without clergy; and by the 8 Geo. II. c. 20. the offence itself is made felony without benefit of clergy. By the same act persons maliciously drawing up flood-gates, made for preserving the navigation, are subject to imprisonment and hard labour for a month, upon a summary conviction before two justices of the peace.

Offenders in these cases may be tried in any county in England; those out of prison discovering accomplices, are intitled to pardon, and parties injured may recover damages from the hundred. These general acts were suffered to expire, and then were revived and made perpetual by the 27 Geo. II. c. 16; but the

4 Geo. III. c. 12. enacts, that if any person shall break, throw down, damage, or destroy, any banks, flood-gates, sluices, or other works; or open or draw up any flood-gate, or do any wilful hurt or mischief to any such navigation, so as to obstruct, or prevent the carrying on, completing, supporting, or maintaining such navigation; he shall be adjudged guilty of felony, and may be transported for seven years.

Drainage Works, &c. in particular Places. The injuries which may be done to these establishments are provided against by various local statutes, inflicting different penalties, from six months hard labour, to seven years transportation.

West India Docks. By the 39 Geo. III. c. 69. it is enacted, that if any person shall set on fire any of the works to be made by virtue of this act, or any ship or vessel lying in the said canal, or the docks, or other works, he shall be adjudged guilty of felony without benefit of clergy. And if any person shall demolish, break down, cut or destroy, any of the said works, or any vessel lying in the said canal, docks, or other works; he shall suffer fine, imprisonment, or transportation, at the discretion of the court before whom he is tried and convicted. In case any person shall cut, break, or destroy any rope, or other thing by which any ship or other vessel in the said canal, or docks, or in any place in the river Thames, between London-bridge and the mouth of the river Lea, shall be moored or fastened, he shall for every offence forfeit not exceeding 10*l*.

King's Ships, Dock-yards, &c. The offence of embezzling the king's stores has been before treated of: and further, the stat. 12 Geo. III. c. 24. enacts, that if any person shall, either within this realm, or in any place thereunto belonging, set on fire, or burn, or otherwise destroy, or cause or assist in doing it, any of his majesty's ships or vessels of war, whether on float or building in any of his majesty's dock-yards, or building or repairing in any private yards; or any of his majesty's arsenals, magazines, dock-yards, rope-yards, victualling offices, or buildings thereto belonging; or any timber, or materials there; or any military, naval, or victualling stores, or other ammunition of war, or any place where the same are kept or deposited; he shall be adjudged guilty of felony without benefit of clergy. The offender may be tried in any county, and the crime is also cognizable by a court-martial.

Private Ships, Wrecks, &c. Offences relating to these are described in this volume, p. 270.

Besides the regulations there mentioned, it is provided by 2 Geo. III. c. 28. that if any person shall cut, damage, or spoil any cordage, cable, buoys, buoy-rope, head-fast, or other fast, fixed to any anchor or moorings belonging to any ship or vessel

vessel at anchor or mooring in the river Thames, or any rope used for the purpose of mooring or rafting masts or timber; or shall be aiding or assisting therein; with an intent to steal the same; such person being convicted on the oath of two witnesses, shall be transported for seven years. Also, in case any person acting in the execution of any of the powers granted by this act, shall be obstructed therein; every person so obstructing, and all such as shall act in their assistance, on conviction at the general or quarter sessions of the county or city adjoining, shall be transported for seven years.

Also by 33 Geo. III. c. 67. (made perpetual by 41 Geo. III. c. 19.) if any seaman, keelman, casler, or ship carpenter, or other person, shall burn or set fire to any ship, keel, or other vessel, he shall be adjudged guilty of felony without benefit of clergy. And if any person shall destroy or damage any ship, keel, or other vessel, (otherwise than by fire,) he shall on conviction, either at a session of oyer and terminer, or at a general or quarter session of the peace, be transported, not exceeding fourteen years, nor less than seven. If these offences are committed at sea, they may be tried at an admiralty session; and prosecution must be commenced within twelve months.

THREATENING LETTERS OR WRITINGS. The occasion and object of the laws in force against the offence of sending threatening letters and writings to others, are well explained in the preamble of the black act, which recites, that ill-designing and disorderly persons had; of late, associated themselves, &c. and had sent letters in fictitious names to several persons demanding venison, and money, and threatening some great violence, if such their unlawful demands should be refused, or if they should be interrupted in, or prosecuted for, such their wicked practices; and had actually done great damage to several persons, who had either refused to comply with such demands, or endeavoured to bring them to justice: and then enacts, that if any person, (whether armed and disguised, or not) shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; or shall forcibly seize any person in custody for such offence; or shall, by gift or promise, procure any to join him in any such unlawful act; he shall be adjudged guilty of felony without benefit of clergy. Such offenders not surrendering themselves when demanded by the king's proclamation, and making full confession of their accomplices, are also made guilty of felony without benefit of clergy. Persons who, after the time for such surrender expired, shall conceal, aid, abet, or succour any such offender, knowing him to have been so charged, and to have been required to surrender by such order, shall be guilty

guilty of felony without benefit of clergy. And such offences may be tried in any county of England.

The 27 Geo. II. c. 15. further enacts, that if any person shall knowingly send any letter without any name subscribed, or signed with a fictitious name or names, letter or letters, threatening to kill, or murder any of the king's subjects, or to burn their houses, barns, corn, hay, or straw, though nothing is demanded in such letter; or shall forcibly rescue any person in custody for the same; he shall be adjudged guilty of felony without benefit of clergy. Lastly, by 30 Geo. II. c. 24. all persons who shall knowingly send or deliver any letter or writing, with or without a name, or with a fictitious name or letter, threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money or goods, shall be deemed offenders against law and the public peace, and be fined and imprisoned, or put in the pillory, or publicly whipped, or transported for seven years.

For protection of masters of manufactories, it is provided by 12 Geo. I. c. 34. that if any person shall write, or send any letter, or other writing or message, threatening any hurt or harm to any master-woolcomber, or master-weaver, or other person concerned in the *woollen manufacture*, or threatening to burn, pull down, or destroy any of their houses or out-houses, or to cut down or destroy any of their trees, or to maim or kill any of their cattle, for not complying with any demands, claims, or pretences of any workmen, or others employed by them, or for not conforming or submitting to any illegal bye laws, ordinances, rules or orders; any such offender, being convicted within twelve calendar months, shall be adjudged guilty of felony and transported for seven years. The 22 Geo. II. c. 27. extends these provisions to journeymen dyers, journeymen hot-pressers, and all other persons employed in the *woollen manufactures*, and also to journeymen, servants, workmen, and labourers, employed in the making of felts or hats, and in manufactures of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, and leather, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another.

RIOTS. The *riotous assembling of twelve persons*, or more, and not dispersing upon proclamation, was made high treason by 3 and 4 Edw. VI. c. 5. when the king was a minor, and a change in religion to be effected: but that statute was repealed by 1 Mary, c. 1. though the prohibition was in substance re-enacted, with an inferior degree of punishment, by 1 Mary, st. 2. c. 12. which made the same offence a single felony. These

statutes

Statutes specified and particularized the nature of the riots they were meant to suppress; as, for example; such as were set on foot with intention to offer violence to the privy council, or to change the laws of the kingdom, or for certain other specific purposes: in which cases, if the persons were commanded by proclamation to disperse, and they did not, it was felony, but within the benefit of clergy; and also the act indemnified the peace officers and their assistants, if death ensued from their endeavours to suppress such riot. This act continued in force till the end of Elizabeth's reign, and then expired. From this period to the death of queen Anne, it was not revived: but, at the accession of George the first, in order to support the act of settlement, it was renewed and made perpetual, with large additions. For, whereas the former acts expressly defined and specified what should be accounted a riot, the 1 Geo. I. c. 5. enacts, generally, that if any twelve persons are unlawfully assembled to the disturbance of the peace, and any one justice of the peace, sheriff, under sheriff, or mayor of a town, shall think proper to command them by proclamation to disperse, if they contemn his orders and continue together for one hour afterwards, such contempt shall be felony without benefit of clergy. The proclamation, or what is commonly called "reading the riot act," is in these words: "Our sovereign lord the king chargeth and commandeth all persons, being assembled, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the act made in the first year of king George, for preventing tumults and riotous assemblies. God save the king." If the reading of the proclamation is opposed by force, or the reader in any manner wilfully hindered, such opposers and hinderers are felons without benefit of clergy: as are all persons to whom such proclamation ought to have been made, knowing of such hindrance, and not dispersing. The indemnifying clause, in case any of the mob are killed, is copied from the act of Mary; and, by a subsequent clause, if any of the persons so riotously assembled, begin, even before proclamation, to pull down any church, chapel, meeting-house, dwelling-house, or out-houses, they shall be felons without benefit of clergy. Persons whose buildings are so demolished may recover damages in an action against the hundred. And it was determined after the riots in 1780, that the owners of houses might recover damages also for their furniture, or for any injury done to their property at the same time.

Beside the powers given by these statutes, the common law provided against tumultuary meetings in breach of the

peace, denominating them, according to circumstances, riots, routs, or unlawful assemblies.

A riot is a tumultuous disturbance of the peace, by three persons, or more, assembling together of their own authority, with an intent of mutually assisting one another against any who shall oppose them in the execution of some enterprize of a private nature, and afterwards actually executing the same in a violent turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful.

A rout is a disturbance of the peace by persons assembling to do a thing, which, if executed, would make them rioters, and actually making a motion to the execution thereof. But by some books the nature of a rout is confined to such assemblies only as are occasioned by some grievance common to all the company, as the inclosure of land where they all claim a right of common, &c. In general, it agrees with the description of a riot, but that it may be a complete offence without the execution of the intended enterprize.

An unlawful assembly is said to be a disturbance of the peace by persons barely assembling to do a thing, which, if it were executed, would make them rioters; but neither executing nor making a motion toward the execution of it. But this seems to be too narrow a definition; any meeting of great numbers of people with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the king's subjects, seems properly to be called an *unlawful assembly*; as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to consult on the most proper means for the recovery of their interests; for no one can foresee what may be the result of such meeting. Also an assembly of a man's friends for the defence of his person against those who threaten to beat him, if he go to such a market, &c. is unlawful; for he who is in fear of such insults must provide for his safety by demanding the surety of the peace against those by whom he is threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders to the disturbance of the public peace. Yet an assembly of a man's friends in his own house for defence against those who threaten to make an unlawful entry, or to beat him therein, is indulged by law; for a man's house is looked upon as his castle. When persons are thus unlawfully assembled to the number of twelve, the offence may be capital, but the punishment, when they do not exceed eleven, is by fine and imprisonment only. The same is the case in riots and routs by the common law; to

to which the pillory in very enormous cases has been sometimes superadded. And by the stat. 13 Hen. IV. c. 7. any two justices, together with the sheriff or under sheriff of the county, may come with the *posse comitatus*, if need be, and suppress any such riot, assembly, or rout, arrest the rioters, and record upon the spot the nature and circumstances of the whole transaction; which record alone shall be a sufficient conviction of the offenders. In the interpretation of which statute it has been holden, that all persons, noblemen and others, except women, clergymen, persons decrepit, and infants under sixteen, are bound to attend the justices in suppressing a riot, upon pain of fine and imprisonment, and that any battery, wounding, or killing the rioters, that may happen in suppressing the riot, is justifiable.

By 33 Geo. III. c. 67. the assembly of seamen, keelmen, casters, and ship carpenters, to hinder or obstruct the loading or unloading, or the sailing or navigating of any ship, keel, or other vessel, or to deter, prevent, hinder, or obstruct any seaman, keelman, caster, or ship carpenter, from working at his lawful trade, is prohibited under penalty of imprisonment not exceeding twelve, nor less than six months. The punishment of a second offence is transportation, for not more than fourteen years, nor less than seven. The prosecutions are to commence within a year after the fact.

ASSAULTS AND BATTERIES. An *assault* is an attempt or offer, with force and violence, to do a corporal hurt to another; as by striking at him with or without a weapon, or presenting a gun at him at a distance to which the gun will carry, or pointing a pitchfork at him, standing within the reach of it, or by holding up one's fist at him, or by any other such like act done in an angry threatening manner: hence it clearly follows, that one charged with an assault and battery may be found guilty of the former, and yet acquitted of the latter. No words whatever can amount to an assault. Any injury, be it never so small, being actually done to the person of a man in an angry, revengeful, rude, or insolent manner; as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, is a battery in the eye of the law. The general punishment for assaults is by fine, but the party aggrieved has also an action, by which he may recover a compensation in damages; and there are express punishments by various statutes for different species of assaults, of which some account has already been given.

AFFRAYS. The word *affray* is derived from the French word *effrayer*, to terrify, and, in a legal sense, is taken for a public offence to the terror of the people. There may be an *assault* which will not amount to an *affray*, as where it hap-

pens in a private place, out of the hearing or seeing of any, except the parties concerned; no quarrelsome or threatening words whatsoever amount to an affray; and no one can justify laying his hands on those who barely quarrel with angry words, without coming to blows; yet the constable may, at the request of the party threatened, carry the person, who threatens to beat him, before a justice, to find sureties. Affrays may be suppressed by any private person present, who is justifiable in endeavouring to part the combatants, whatever consequence may ensue; but more especially the constable, or other similar officer, however denominated, is bound to keep the peace; and to that purpose, may break open doors to suppress an affray, or apprehend the affrayers; and may either carry them before a justice, or imprison them by his own authority for a convenient space till the heat is over; and may then perhaps also make them find sureties for the peace. The punishment of common affrays is by fine and imprisonment; the measure of which must be regulated by the circumstances of the case: for, where there is any material aggravation, the punishment proportionally increases. Deliberately engaging in a duel, would be punished as an affray of the most dangerous description; and affrays in a church, or church yard, are still more severely considered. In those places words, unaccompanied with acts, are sufficient to constitute an offence; it being enacted by 5 and 6 Edw. VI. c. 4. that if any person shall, by words only, quarrel, chide, or brawl, in a church, or church-yard, the ordinary shall suspend him, if a layman, *ob ingressu ecclesie*, and, if a clerk in orders, from the ministration of his office, during pleasure. And, if any person in such church, or church-yard, proceeds to smite or lay violent hands upon another, he shall be excommunicated *ipso facto*; or if he strikes him with a weapon, or draws any weapon with intent to strike, he shall, beside excommunication, being convicted by a jury, have one of his ears cut off; or having no ears, be branded with the letter F. on his cheek.

RIDING OR GOING ARMED. Riding or going armed with unusual or dangerous weapons is a species of affray without actual violence or verbal threat, since its direct effect is to terrify the people; it is considered a crime against the public peace, and is particularly prohibited by the statute of Northampton, 2 Edw. III. c. 3. upon pain of forfeiture of the arms, and imprisonment during the king's pleasure. A man cannot excuse the wearing such armour in public, by alleging that one threatened him, and that he wears it for the safety of his person from his assault. No wearing of arms is within the meaning of this statute, unless accompanied with such circum-

stances as are apt to terrify the people ; and no person is within the intention of the said statute, who arms himself to suppress dangerous rioters, rebels, or enemies, and endeavours to suppress or resist such disturbers of the peace or quiet of the realm.

FORCIBLE ENTRY AND DETAINER. By the common law a man disseised of any lands, or tenements (if he could not prevail by fair means), might lawfully regain possession by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time. But this indulgence having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions, it was thought necessary, by many severe laws, to restrain all persons from the use of such violent methods of doing themselves justice ; therefore by the 5 Rich. II. fl. 1. c. 8. all forcible entries are punished with imprisonment and ransom at the king's will ; and by the several statutes of 15 Rich. II. c. 2. 8 Hen. VI. c. 9. 31 Eliz. c. 11. and 21 Jas. I. c. 15. upon any forcible entry, or forcible detainer after peaceable entry, into any lands, or benefices of the church, a justice of the peace, taking sufficient power of the county, may go to the place, and there record the force upon his own view, as in case of riots ; and upon such conviction may commit the offender to jail, till he makes fine and ransom to the king. And moreover the justices have power to summon a jury, to try the forcible entry or the detainer complained of ; and, if the same be found by that jury, then, besides the fine on the offender, the justices shall make restitution by the sheriff of the possession, without inquiring into the merits of the title ; for the force is the only thing to be tried, punished, and remedied by them ; and the same may be done by indictment at the general sessions. But this provision does not extend to such as endeavour to maintain possession by force, where they themselves, or their ancestors, have been in the peaceable enjoyment of the lands and tenements for three years immediately preceding.

SURETY FOR THE PEACE AND FOR GOOD BEHAVIOUR. As the last mentioned offences are chiefly considered as directed against the peace of the king's subjects, it may be proper in this place to give an account of the mode resorted to for preventing them, by taking sureties for the peace and for good behaviour. By the Saxon constitution these sureties were always at hand, by means of Alfred's wife institution of decennaries or frank pledges ; wherein the whole neighbourhood or tithing

nothing of freemen were mutually pledges for each other's good behaviour. But this great and general security being now fallen into disuse and neglected, there has succeeded to it the method of making suspected persons find particular and special securities for their future conduct: of which we find mention in the laws of Edward the Confessor; "*tradat fidejussores de pace et legalitate tuenda.*" This security consists in being bound, with one or more sureties, in a recognizance or obligation to the king, entered on record, and taken in some court or by some judicial officer, whereby the parties acknowledge themselves to be indebted to the crown in the sum required, (for instance, 100*l.*) with condition to be void, if the party shall appear in court on such a day, and, in the mean time, shall keep the peace, either generally, towards the king, and all his liege people; or particularly also, with regard to the person who craves the security. Or, if it be for the good behaviour, then on condition that he shall demean and behave himself well, (or be of good behaviour), either generally or specially, for the time therein limited, as for one or more years, or for life. This recognizance, if taken by a justice of the peace, must be certified to the next session, in pursuance of the stat. 3 Hen. VII. c. 1.; and if the condition of such recognizance be broken, by any breach of the peace in one case, or any misbehaviour in the other, the recognizance becomes forfeited or absolute; and, being *extracted* or extracted (taken out from among the other records) and sent up to the exchequer, the party and his sureties, having now become the king's absolute debtors, are sued for the several sums in which they are respectively bound. Any justice of the peace, by virtue of his commission, or those who are *ex officio* conservators of the peace, may demand such security according to their own discretion; or it may be granted at the request of any subject, upon due cause shewn, provided such demandant be under the king's protection; or, if the justice is averse to act, it may be granted by a mandatory writ, called a *supplicavit*, a writ which is seldom used; for, when application is made to the superior courts, they usually take the recognizances, under the stat. 21 Jas. I. c. 8. A peer or peeress cannot be bound over in any other place, than the court of king's-bench or chancery: though a justice of the peace has power to require sureties of any other person, being *compos mentis*, even if he be a fellow justice or other magistrate. Wives may demand it against their husbands, or husbands, if necessary, against their wives.

A recognizance may be discharged, either by the demise of the king, to whom the recognizance is made, or by the death

death of the principal party bound thereby, if not before forfeited ; or by order of the court, to which it is certified by the justices, (as the quarter sessions, assizes, or king's bench,) if they see sufficient cause : or in case he at whose request it was granted, if granted upon a private account, will release it, or does not make his appearance to pray that it may be continued.

Thus far what has been said is applicable to both species of recognizances, for the peace, and for the good behaviour ; but as these securities are in some respects different, especially as to the cause of granting, or the means of forfeiting them, they are now to be considered separately.

And first, with respect to *sureties for the peace*. Any justice of the peace may, *ex officio*, bind to keep the peace, any person who, in his presence ; makes any affray ; or threatens to kill, or beat another ; or those who contend together with hot and angry words ; or go about with unusual weapons or attendance, to the terror of the people ; and all such as he knows to be common barrators ; and such as are brought before him by the constable for a breach of the peace in his presence : and all such persons, as having been before bound to the peace, have broken it, and forfeited their recognizances. Also, wherever any private man has just cause to fear that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him ; or that he will procure others so to do ; he may demand surety of the peace against such person : and every justice of the peace is bound to grant it, if he who demands it will make oath, that he is actually under fear of death and bodily harm ; and will shew that he has just cause to be so, by reason of the other's menaces, attempts, or having lain in wait for him ; and will also further swear, that he does not require such surety out of malice or for mere vexation. This is called swearing the peace against another : and, if the party does not find such sureties, as the justice in his discretion shall require, he may immediately be committed till he does.

Such recognizance for keeping the peace, when given, may be forfeited by any actual violence, or even an assault, or menace, to the person of him who demanded it, if it be a special recognizance : or, if the recognizance be general, by any unlawful action whatsoever, that either is, or tends to a breach of the peace ; or, more particularly, by any one of the many species of offences which were mentioned as crimes against the public peace, or by any private violence committed against any of his majesty's subjects. But a bare trespass upon the lands or goods of another, which is a ground for a civil action, unless accompanied

accompanied with a wilful breach of the peace, is no forfeiture of the recognizance. Neither are mere reproachful words, as calling a man a knave or liar, any breach of the peace, so as to forfeit a recognizance, (being looked upon to be the effect of unmeaning heat and passion) unless they amount to a challenge to fight.

The *surety for good behaviour* includes security for the peace, and somewhat more. Justices are empowered by the 34 Edw. III. c. 1. to bind over to the good behaviour towards the king and the people, all them that *be not of good fame*, where-ever they be found; to the intent that the people be not troubled or endamaged, nor the peace diminished, nor merchants and others, passing by the highways of the realm, be disturbed nor put in the peril which may happen by such offenders. Under the general words of this expression, that *be not of good fame*, it is holden, that a man may be bound to his good behaviour for causes of scandal against moral propriety, as well as against the peace, as for haunting bawdy-houses with women of bad fame; or for keeping such women in his own house; or for words tending to scandalize the government; or in abuse of the officers of justice, especially in the execution of their office. Thus also a justice may bind over all night-walkers, eaves-droppers, such as keep suspicious company, or are reputed to be pilferers or robbers, such as sleep in the day, and wake in the night, common drunkards, whoremasters, the putative fathers of bastards, cheats, idle vagabonds, and other persons, whose misbehaviour may reasonably bring them within the general words of the statute, as persons not of good fame: an expression, it must be owned, of so great a latitude, as leaves much to be determined by the discretion of the magistrate himself. But if he commits a man for want of sureties, he must express the cause with convenient certainty; and take care that such cause be a good one.

A recognizance for the good behaviour may be forfeited by all the same means, as one for the security of the peace; and also by some others. As, by going armed with unusual attendance, to the terror of the people; by speaking words tending to sedition; or by committing any of those acts of misbehaviour, which the recognizance was intended to prevent. But not by barely giving fresh cause of suspicion of that which perhaps may never actually happen: for, though it is just to compel suspected persons to give security to the public against misbehaviour that is apprehended; yet it would be hard, upon such suspicion, without the proof of any actual crime, to punish them as for a forfeiture of their recognizance.

NUISANCE. Nuisance, *nocumentum*, or annoyance, signifies

any thing that works hurt, inconvenience, or damage. And nuisances are of two kinds; *public* or *common* nuisances, which affect the public, and are an annoyance to *all* the king's subjects; and private nuisances, which are defined to be any thing done to the hurt or annoyance of the lands, tenements, or hereditaments of another. In this plate public or common nuisances alone will be treated of.

A common nuisance is an offence against the public, either by doing a thing which tends to the annoyance of all the king's subjects, or by neglecting to do a thing which the common good requires. Annoyances affecting particular persons only, are not punishable by a public prosecution, but are left to be redressed by private actions.

Under the extensive description of a nuisance, a great variety of offences are to be considered, and many of them are of sufficient moment to claim particular notice.

Nuisances with respect to High-ways. It is said there are three kinds of ways: a foot-way, which is called in Latin, *iter*; a pack and prime way, which is both a horse and foot-way, called in Latin *actus*; and a cart-way, which contains the other two, and also a way for carts, and is called in Latin *via* or *aditus*; and this is either common to all men, and then it is called, *via regia*; or belongs to some city or town, or private person, and then it is called *communis strata*. It seems that any one of these ways which is common to all the king's people, whether it lead directly to a market town, or only from town to town, may be properly called a high-way, and that any such cart-way may be called the king's high-way; and that a nuisance in any of them is punishable by indictment in the court-leet. And in books of the best authority, a *river* common to all men is called a high-way; but a street built upon a person's own ground is a dedication of the high-way so far only as the public has occasion for it, *viz.* for a right of passage, and is not to be understood as a transfer of the absolute possession of the soil.

By the common law, the general charge of repairing all high-ways lies on the occupiers of the lands in the parish wherein they are. And the 13th Geo. III. c. 78. at a length, and with a minuteness which cannot be transferred into this work, provides for the repair of high-ways by the appointment of commissioners, surveyors, and other proper officers, who are enabled to require from certain inhabitants of every parish the performance of necessary duties in respect to the reparation of ways, and to receive certain compositions or contributions from those who cannot perform them. Justices are also empowered to levy rates for extraordinary charges, and fines may be imposed for non-performance of the duty.

All

All injuries whatsoever to any high-way, as by digging a ditch, or making a hedge over thwart it, or laying logs of timber in it, or by doing any other act which will render it less commodious to the king's people, are public nuisances at common law.

There is also a particular nuisance created by statute, namely the drawing of a travelling carriage with more than six horses in length, the permitting which occasioned the carrying of such excessive loads in such carriages, that the weight in many places rendered the roads impassable. On this subject the statute already mentioned has provided, that no waggon, having the sole or bottom of the fellys of the wheels of the breadth of nine inches, shall be drawn with more than eight horses; and no cart, having the sole of the fellys of the breadth of six inches, and rolling on each side a surface of nine inches, with more than five horses; no waggon, having the sole of the fellys of the breadth of six inches, and rolling on each side a surface of nine inches, be drawn with more than seven horses; and no such waggon rolling a surface of six inches only shall be drawn with more than six horses; no cart having the sole of the fellys of the breadth of six inches shall be drawn with more than four horses; no waggon having the sole of the fellys of less breadth than six inches shall be drawn with more than five horses; no cart having the sole or bottom of the fellys of less breadth than six inches shall be drawn with more than three horses upon high-ways, not being turnpike roads; under pain that the owner of such waggon or cart respectively shall forfeit five pounds, and the driver, not being the owner, for every horse or beast which shall be so drawing above the number limited, ten shillings to the use of the informer: but carriages moving upon wheels or rollers of the breadth of sixteen inches on each side, with flat surfaces, are allowed to be drawn with any number of horses, or other cattle. The prosecution is to be commenced before a justice within three days after the fact, and any action, within a month; and notice must be given to the owner or driver, on the very day that such information or action is intended.

For the prevention of accidents by the carelessness of drivers, and affording the means of bringing them to punishment for misbehaviour, many excellent provisions are made, such as obliging the owner to inscribe his name, with a certain number, on every cart, and directing the driver to be in such a situation as to retain a proper command over the horses; and not riding on the cart, or deserting it; or by any negligence or misbehaviour rendering likely, much less

contributing to the injury of others. The offences in these respects are punished with fines to be recovered in a summary way before justices of the peace.

Nuisances in Turnpike Roads. The turnpike roads of England are placed under the management and direction of trustees, who are usually named and appointed by the respective acts of parliament, which are occasionally passed for the purpose of making, repairing, and sustaining such particular roads. But the powers of these statutes being confined to separate objects, it was thought expedient to pass some general laws which should apply in common to all trustees and turnpike roads throughout the kingdom. The chief statute on this subject is the 13 Geo. III. c. 84. which provides with great exactness for the appointment and qualification of trustees, the regulation of carriages, weighing engines, tolls, repairs, and many other particulars; and, with respect to nuisances, declares, that if the surveyor, or other person having the care of any turnpike road, shall knowingly suffer to be or remain, for four days in any part thereof, within ten feet on either side of the middle of such road, any posts, heaps of stones, rubbish, or earth, set up or raised on or above the surface of the said road, by which the passage may be obstructed or confined, except posts, blocks, stones, or banks of earth, fixed in the ground, or raised for securing horse or foot roads, or passages for water, and all direction posts and stones, such surveyor shall forfeit twenty shillings. If any person shall encroach, by making any hedge, ditch, or other fence, on any turnpike road, within the distance of thirty feet from the centre; or shall plough, harrow, or break up the soil of any land or ground, within fifteen feet; every person so offending shall forfeit forty shillings to the informer, and the trustees may compel him at his own expence to remove or remedy the nuisance. Persons damaging mile-stones, posts, blocks, banks, &c. forfeit not exceeding 5*l.* nor less than ten shillings, or for default of payment are committed to the house of correction, to be whipped and kept to hard labour not more than a month, nor less than seven days.

Nuisances with respect to Bridges. Of common right the charge of repairing all common bridges lies upon the county wherein they are, unless part be within a franchise, in which case it is said, that so much as is within the franchise shall be repaired by those of the franchise. A man is not bound to repair a new bridge built by himself for the common good; but the county is bound to repair it, if it become of public convenience. Those who are bound to repair bridges, must make them of such height and strength, as shall be answerable

swerable to the course of the water, whether it continue in the old channel, or make a new one; and they are not punishable as trespassers for entering on any adjoining land for such purpose, or for laying thereon the materials requisite for such repairs. Such is the provision made by common law; and by various statutes, the justices in the county or place upon which the support and reparation of the bridge lie, are enabled to take all proper measures for effecting those objects, and for prevention of nuisances and injuries.

PUBLIC HOUSES. The establishment of houses for the reception of travellers, or the resort of persons of every class, for honest purposes of business or pleasure, is among the first conveniences of society; but as no principle is so easily capable of perversion to the most immoral and dangerous ends, as that which constitutes places of easy and promiscuous resort, so the regulation of public houses is remarkably strict, and abundant care is taken to prevent them from becoming nuisances; or if they do degenerate into that character, to suppress them, and punish the proprietors.

By the common law, the keeper of an inn may be indicted and fined, as guilty of a public nuisance, if he usually harbours thieves or persons of scandalous reputation, or suffers frequent disorders in his house, or takes exorbitant prices, or sets up a new inn in a place where there is no need of one, to the hindrance of other ancient and well governed inns, or keeps it in a place in respect of its situation wholly unfit for such a purpose. But any person may lawfully set up a new inn, unless it be inconvenient to the public in some of the respects already noticed, and has no need or any licence from the king for this purpose, for the keeping of an inn is no franchise, but a lawful trade, open to every subject; but if an inn degenerates into an ale-house, by suffering disorderly tippling, it shall be deemed as such; and if one who keeps a common inn, refuses either to receive a traveller as a guest into his house, or to find him victuals or lodging, upon his tendering a reasonable price, he is not only liable to render damages for the injury, in an action on the case at the suit of the party grieved, but may also be indicted and fined, at the suit of the king. Also it is said, that he may be compelled by the constable of the town to receive and entertain such a person as his guest, and that it is no way material whether he have any sign before his door or not, if he make it his common business to entertain passengers.

The statutes 5 and 6 Edw. VI. c. 25., and 26 Geo. II. c. 31. provide that none shall be admitted or suffered to keep any common

mon ale-house or tippling house, except in fairs, but such as shall be allowed in open sessions, or by two justices of peace, whereof one to be of the *quorum*. The exception respecting fairs is made from the necessity of accommodating the persons who resort to them, and therefore only allows the unlicensed sale in the place where the common fair is held, and not in any private house which may be within the limits of the town for which it is kept. Houses in public watering places, where they take in lodgers and boarders coming to use the waters during the season, and dress their victuals, supply them with ale, beer, and other liquors, and entertain their horses at so much per day, but sell to no other persons, are not such public houses as require to be licensed.

By 26 Geo. II. c. 31. no licences shall be granted but on the first day of September, yearly, or within twenty days after; and such licence shall be made for one year only, to commence on the twenty-ninth day of the said September. The day and place for granting such licences is appointed by two or more of the justices acting for the division where the person to be licensed dwells, by a warrant under their hands and seals at least ten days before such meeting, directed to the high constable of the division, requiring him to order the petty constables to give notice to the inn-keepers and ale-house-keepers of the day and place. In Middlesex and Surry, by 32 Geo. III. c. 59. the justices appoint at least six, but not more than eight licensing days; and in cities and corporations the ancient customs with respect to time are still followed.

No licence can be granted to any person not licensed the preceding year, unless he produce at the general meeting of the justices in September a certificate under the hands of the parson, vicar, or curate, and the major part of the church-wardens and overseers, or else of three or four respectable and substantial householders and inhabitants of the parish or place where such ale-house is to be, setting forth that such person is of good fame, and of sober life and conversation; and it shall be mentioned in such licence that such certificate was produced; but this regulation does not extend to cities and corporations. If ale-house-keepers die or remove, &c. before the expiration of their licences, new ones may be granted to executors, or new tenants, till the next licensing day, on entering personally into such recognizance, with such sureties as is directed in respect to persons to whom licences are to be originally granted. Licences must be equally obtained by persons keeping ale-houses, or tippling-houses, or selling wines, spirituous liquors, or strong waters by retail; and all persons selling quantities less than two gallons
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are retailers. Nor can a licence to sell wine or spirituous liquors by retail be granted to any who have not also an ale or beer licence,

The recognizance above alluded to is required by the 26 Geo. II. c. 31. which directs, that upon granting a licence by justices of the peace to any person to keep an ale-house, inn, victualling-house, or to sell ale, beer, and other liquors by retail, every such person shall enter into a recognizance to the king in the sum of 10*l.*, with two sufficient sureties in 5*l.*, or one sufficient surety in 10*l.* under the usual condition of maintaining good order and rule within the same. These recognizances are returned to the clerk of the peace, and delivered to the justices at their September meeting.

By the same act, any justice of the peace of any county or place, upon complaint or information that a licensed person has committed any act whereby his recognizance may be forfeited, or the condition broken, may, by summons under his hand and seal, require such person to appear at the next general or quarter sessions of the peace, to answer to the matter of such complaint; and also may bind the person making such complaint to appear and give evidence, and the justices, in session, may direct a jury to inquire of the misdemeanor charged; and, if the person is found guilty, order the recognizance to be estreated; and the person offending is disabled to sell any ale, beer, or other liquor, for three years; and any licence granted him during such term is void.

With respect to the keepers of unlicensed houses, it is enacted by 5 and 6 Edw. III. c. 25. that the justices of peace within every shire, city, or liberty, or two of them, may remove, discharge, and put away common selling of ale and beer in common ale-houses and tippling-houses. And it seems to have been the general opinion in the construction of this clause, that an ale-house-keeper suppressed in pursuance of it cannot be licensed again but in open sessions. And by the same statute, if any person not allowed by the justices, shall obstinately keep a common ale-house, two justices may for every offence commit him to jail for three days; and before his deliverance he must enter into recognizance with two sureties, not to keep any common ale-house, or sell ale or beer. The 26 Geo. II. c. 31. adds a penalty of 10*l.* to be recovered before one justice, and applied to the use of the poor. For selling liquors without a licence there are also various penalties, some attended with, and some without imprisonment; and for prevention of extortion both with respect to guests and their cattle, some laws are enacted, but not strictly regarded; nor would they perhaps in modern times produce the desired effect.

The statutes which most immediately tend to prevent what
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may properly be termed nuisances in public houses, are those which are levelled against tippling, drunkenness, and gaming in them. By 1 Jas. I. c. 9. and 4 Jas. I. c. 15. and 21 Jas. I. c. 7. and 1 Chas. I. c. 4., if any inn-keeper, victualler, or ale-house keeper, or any keeper of a tavern, &c. suffer any person to continue drinking or tippling, unless invited by any traveller, and accompanying him only during his necessary abode there; and except labouring and handicraft men, in cities and towns corporate, and market towns, upon the usual working days, for one hour at dinner time, to take their diet in an ale-house; and except labourers and workmen, who for the following of their work by the day or by the great, in any city, town, or village, shall, for the time of their continuing in work there, sojourn, lodge, or victual in any inn, &c.; or except for urgent and necessary occasions, to be allowed by two justices of the peace; that then every such inn-keeper, &c. shall forfeit ten shillings to the use of the poor. The penalty, in ordinary cases, to be levied by constables or church-wardens by warrant of distress, and in the universities by the governors, magistrates, justices of the peace, or other principal officers.

By 4 Jas. I. c. 5. and 21 Jas. I. c. 7. whoever shall be drunk, and within six months be convicted, either on an indictment at assizes or sessions, or court leet, or before any justice of peace, upon view or confession, or by oath of one witness, shall forfeit five shillings, to be paid within one week after conviction to the church-wardens of the parish, or levied by distress; and if the party is unable to pay, he is to be set in the stocks for six hours; and for a second offence, bound over to good behaviour with two sureties in 10*l*. A constable neglecting his duty in this matter forfeits ten shillings. By the same statutes, and the 1 Chas. I. c. 4. persons remaining beyond the time above described, tippling or drinking at any inn or public house, forfeit for each offence 3*s*. 4*d*., or may be set in the stocks four hours. These statutes do not abridge the ecclesiastical jurisdiction; but no offender can be punished in more ways than one; nor do they alter the jurisdictions, rights, privileges, or charters of the universities. Above all things, it is necessary to remember, that whatever crime or injury may be committed in a state of intoxication, the law considers that circumstance not as an excuse or extenuation, but as an original crime in itself, and an aggravation of that which arose out of it.

Ale-house keepers offending against these acts are for the space of three years next ensuing utterly disabled to keep any such ale-house.

With respect to gaming in public houses, the 30 Geo. II. c. 24. enacts, that if any person licensed to sell any sort of liquors

liquors shall knowingly suffer any gaming with cards, dice, draughts, shuffle-board, Mississippi, or billiard tables, skittles, nine-pins, or with any other implements of gaming, by any journeymen, labourers, servants, or apprentices; on conviction by confession, or on the oath of one witness, before any justice of the county or place within six days after the offence committed, he shall forfeit forty shillings, and for every like offence afterwards 10*l.*, to be levied by warrant of distress, and three-fourths thereof paid to the poor, and the other fourth to the informer; and if any such persons shall so game as aforesaid, and complaint thereof shall be made on oath to a justice of the place, he may issue his warrant to a constable to apprehend and carry them before a justice of the county, and on conviction they shall forfeit from five to twenty shillings, or be committed to hard labour.

GAMING. The particular regulations with respect to gaming in public houses lead to the consideration of gaming in general. However usual it may be to treat gaming as a crime, it is not so considered by the law; but, on the contrary, is permitted on every possible subject, except where it is accompanied with circumstances repugnant to morality or public policy; or where, as in certain special cases, it is restrained by positive statutes. But on the other hand, the restrictions are so numerous, and the bad effects of disregarding them so striking and evident, both in a moral and political light, that all classes of men concur in reprobation of a practice which is at once the bane of prosperity, and the destruction of every virtue; which extinguishes honour, humanity, and social affection, and levels all distinctions in society, not by instructing and exalting the ignorant, the needy, and the humble, but by degrading the learned, the wealthy, and the honourable.

A *wager* or *bet* is defined to be a contract entered into without colour or fraud, between two or more persons, for a good consideration, and upon mutual promises to pay a stipulated sum of money, or to deliver some other thing to each other, according as some prefixed and equally uncertain contingency shall happen, within the terms upon which the contract is made. Wagers which tend to violate the peace of society, by exhibiting a third person, who is innocent, in a ridiculous and contemptible light, and to break in upon his private comfort and peace of mind, are void. Wagers also which conduce to the commission of any criminal act, which are an incitement to immorality, or which are made upon a subject *contra bonos mores*, are void. And many contracts which are not against the principles of morality or public decency are still void, as against the maxims of *sound policy*; and therefore all wagers which in their nature tend to encourage evil and corrupt practices, re-
pugnant

pugnant to the principles of justice and equity, and detrimental to the public good, are illegal; as, if a wager was laid with a judge upon the event of a cause depending before him; or even with one of the lords upon the event of an appeal; or if colourably made as a cover to conceal usury, simony, or any other illegal practice.

The offence of keeping a gaming house is first noticed in the statute 33 Hen. VIII. c. 9. which forbids all manner of persons for gain, lucre, or living, to keep, have, hold, occupy, exercise, or maintain, any common-house, alley, or place of bowling, coying, cloysh-cayls, half-bowl, tennis, dicing-table, or carding, or any other manner of game prohibited by any statute, under penalty of forty shillings a day; every person haunting such places was to forfeit six shillings and eight-pence. This act was however chiefly levelled against offenders of the lower order; for it provides that every nobleman and other, having manors, lands, tenements, or other yearly profits, for term of life in his own right, or in his wife's right, to the yearly value of a hundred pounds or above, may command, appoint, or license, his servants, or family of his house, to play within the precinct of his house or houses, gardens, or orchards at cards, dice, tables, bowls, or tennis, as well among themselves as others repairing to the same house or houses; and that they so playing by command or licence as aforesaid shall not incur any penalty. This distinction is however abolished by succeeding statutes, particularly 12 Geo. II. c. 28. and 18 Geo. II. c. 34. which prohibit all persons from keeping houses for playing at unlawful games, and annul the privilege of parliament in case of prosecution.

To prevent excessive and fraudulent gaming, the 16 Chas. II. c. 7. enacts, that if any person of any degree or quality whatsoever, by any fraud, cozenage, or unlawful device, in playing at or with cards, dice, tables, &c.; or by cock-fightings, horse-races, dog-matches, foot-races, or other games; or by bearing a share or part in the stakes, wagers, or adventures; or by betting on such as play, act, ride, or run as aforesaid, shall win, or obtain to himself or to any other, any money or other valuable thing, he shall *ipso facto* forfeit and lose treble the sum or value won, half to the king, and half to the loser, provided he prosecute for it within six months, or to any other person who will sue within a year after the expiration of those six months. The penalty may be recovered, with treble costs, in any court at Westminster.

The same statute also directs, that if any person shall play or bet at any pastime or game, (other than for ready money) and lose any money or other thing, exceeding one hundred

hundred pounds, at any one time or meeting, upon ticket or credit, or otherwise, the party losing shall not be bound or compellable to pay; but the contract and all judgments, recognizances, mortgages, bonds, bills, specialties, and securities, given for the same, or any part thereof, shall be utterly void; and the person winning shall forfeit treble the value, one moiety to the king and the other to such person as shall prosecute or sue within a year.

The 9 Anne, c. 14. proceeds much further, and declares, that all notes, bills, bonds, judgments, mortgages, or other securities or conveyances, given or entered into, where the whole or any part of the consideration shall be for money, or other valuable thing won by gaming or betting; or for the reimbursing or repaying any money knowingly lent or advanced for gaming or betting; or at the time and place of play, to any person gaming or betting, shall be void to all intents and purposes; and where such mortgages, securities, or conveyances, shall be of lands, tenements, or hereditaments, they shall enure to the sole use and benefit of, and devolve upon, such persons as should have, or be entitled to such lands, tenements, or hereditaments, in case the grantors, or persons encumbering, had been naturally dead, and as if such mortgages, securities, or other conveyances, had been made to the persons so to be entitled after the decease of the person incumbering; and all grants or conveyances for the preventing of such lands, or hereditaments, from devolving upon such persons by the act intended to enjoy the same, shall be void. Any person, who shall at any time or sitting, by playing or betting at cards, dice, tables, or other games, lose in the whole the sum or value of ten pounds, and shall pay or deliver the same, or any part thereof, the person losing and paying shall be at liberty within three months to sue for and recover the money or goods so lost, or any part thereof, from the winner, with costs of suit: and in case the person losing shall not, within the time aforesaid, really and *bonâ fide* sue and with effect prosecute for the money or other thing lost and paid, any other person may sue for and recover the same, and treble the value with costs; the one moiety to his own use and the other to the poor of the parish. The person sued is also obliged to answer on oath to a bill filed for discovery of money won; and a person who makes discovery and repays, is indemnified against further prosecutions.

Any person winning by fraud, &c. above 10*l.* at one sitting, and convicted thereof on indictment or information, forfeits five times the value, and shall be deemed infamous, and suffer

such corporal punishment as in cases of wilful perjury. Two justices may also cause persons who have no visible estate, but do for the most part support themselves by gaming, to be brought before them, and they shall be committed until they find sureties for their good behaviour for twelve months.

Also, by 18 Geo. II. c. 34. if any person shall win or lose at play, or by betting, at any one time, the sum or value of ten pounds, or within the space of twenty-four hours the sum or value of twenty pounds, such persons shall be liable to be indicted, and being convicted, fined five times the value of the sum so won or lost; which fine shall go to the poor of the parish.

Horse-racing is a mode of gaming which it has been thought fit to encourage, as it tends to improve the breed of a most valuable animal; but excess and irregularity are restricted by the stats. 13 Geo. II. c. 19. and 24 Geo. III. c. 31. which require, that the horses entered for any plate shall be the property of those who enter them, on pain of forfeiture; that no plate shall be run for, of less value than 50*l.* on penalty of 200*l.*; and a penalty of 100*l.* is inflicted on those, who shall make, print, publish, advertise, or proclaim any advertisement, or notice of any plate, prize, sum of money, or other thing, of less value than 50*l.* to be run for by any horse, mare, or gelding.

On the laws against illegal gaming in *lotteries* some statements and observations will be found at page 132 of this volume; it may be necessary to add, that by various statutes from the 10th of William, to the 27th George III. various games, engines, and devices for playing by means of cards, dice, and other contrivances, are declared to be included in the term *lotteries*; and those who open or keep them are accordingly subjected to a penalty of 500*l.*; one third to the king, another to the poor, and another to the informer. Persons playing at them forfeit 20*l.* to be divided in like manner. Those who print or publish any proposals for such illegal lottery are subject to a penalty of 100*l.* Persons who set up any office or place, for making insurances on marriages, births, christenings; or under the denomination of sales of gloves, fans, cards, numbers, or the queen's picture, for the improvement of small sums of money, or the like offices or places under the pretence of improving small sums of money, forfeit for every offence five hundred pounds, to be divided as aforesaid; and persons printing or publishing proposals forfeit in like manner 100*l.* By 8 Geo. I. c. 2. every person who shall keep an office or place under the denomination of sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, for the improvement of small sums of money,

or shall sell or expose to sale any houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods, or other things, by way of lottery, or by lots, tickets, numbers, or figures; or shall make, print, advertise, or publish, or cause to be made, printed, advertised, or published, proposals or schemes for advancing small sums of money by several persons, amounting in the whole to large sums, to be divided among them by the chances of the prizes in some public lottery or lotteries, established or allowed by act of Parliament; or shall deliver out tickets to the persons advancing such sums, to entitle them to a share of the money so advanced, according to such proposals or schemes; or shall make, print, or publish, or cause to be made, printed, or published, any proposal or scheme of the like kind or nature, under any denomination, name, or title whatsoever; and shall be thereof convicted upon the oath of one witness by two justices of the peace, he shall for every offence, over and above any former penalties inflicted by any former acts of parliament, forfeit five hundred pounds; but the person convicted may appeal to the session. For default of payment he is committed to jail for twelve months, and further until payment. Persons adventuring in such sales or schemes forfeit double the sum contributed, with costs.

Also by 9 Geo. I. c. 19. if any person shall, by virtue or colour of any authority from any foreign government, erect or keep any lottery, or undertaking in the nature of a lottery, under any denomination, or make, print, or publish, any proposal or scheme for any such lottery or undertaking, or sell any tickets in any foreign lottery, he shall, on conviction before two justices, forfeit, over and above other penalties, 200*l.* to be levied by distress, and for want of effects remain in jail one year, and until the penalty be paid.

These restrictions are extended and enforced by other statutes of too great number and length to be here enumerated.

Of gaming in the public funds, as prohibited by the statute against stock-jobbing, notice has been taken at p. 102 of this volume.

DISORDERLY HOUSES. A *Brothel* comes under the cognizance of the temporal law as a *common nuisance*, not only in respect of its endangering the public peace, by drawing together dissolute and debauched persons; but also in respect of its apparent tendency to corrupt the manners of both sexes, by such an open profession of lewdness. A *feme covert* is punishable for this offence as much as if she were sole. A lodg-

er who keeps only a single room for such purposes is indictable for keeping a bawdy-house; but the bare solicitation of chastity is not indictable. Offenders of this kind are not only punishable with fine and imprisonment, but also with such infamous punishment as to the court shall seem proper.

For encouragement of prosecution against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted, that if any two inhabitants of any parish or place, paying scot, and bearing lot therein, do give notice in writing to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house, the constable shall forthwith go with such inhabitants to a justice, and shall, upon their making oath that they believe the contents of such notice to be true, and entering into a recognizance in the penal sum of twenty pounds each to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of thirty pounds to prosecute with effect such person for such offence at the next general or quarter sessions, or at the next assizes, as to the justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expences of such prosecution, to be ascertained by any two justices, and be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers shall forthwith pay the sum of ten pounds to each of such inhabitants, or on neglect or refusal, forfeit double the sum withheld. The justice may also bind over the person accused of keeping such disorderly house to appear at the session, and to good behaviour in the mean time. The constable neglecting or refusing to fulfil his duty forfeits 20*l.* to each inhabitant giving him notice.

An unlicensed place of public entertainment is also ranked as a disorderly house by the 25 Geo. II. c. 36., which provides that any house, room, garden, or place of public entertainment of the like kind, in, or within twenty miles of, London or Westminster, without a licence had for that purpose, from the last preceding Michaelmas quarter sessions, under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house; and any constable, or other person, being authorized by warrant under the hand and seal of one justice of the peace, may enter such house, and seize every person found there, to be dealt with according to law. Every person keeping such house, or place, without licence, shall forfeit one hundred

hundred pounds to him who will sue for the same; and on some conspicuous part of houses and places so licensed must be affixed in large capital letters the words, *Licensed, pursuant to act of parliament of the 25th king George II.*; and they must not be opened till five o'clock in the afternoon on pain of forfeiting the licence. This act does not extend to the theatres royal, nor to performances and public entertainments lawfully exercised and carried on by virtue of letters patent or licence of the crown, or of the lord chamberlain of his majesty's household.

STROLLING PLAYERS. By 10 Geo. II. c. 28. every person who shall for lucre, gain, or reward, act, represent, or perform, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part, or parts therein, (in case such person shall not have any legal settlement in the place where the same shall be acted) without authority by virtue of letters patent from his majesty, or licence from the lord chamberlain, shall be deemed a rogue and a vagabond, and liable and subject to all such penalties and punishments, and by such methods of conviction as are inflicted on, or appointed for, the punishment of rogues and vagabonds who shall be found wandering, begging, and misordering themselves. And every such player so performing, whether he has a legal settlement or not, is liable to a penalty of fifty pounds for every offence. This act also provided, that no person should be licensed to act plays in any place except in the city and liberties of Westminster, and in places where the king should be residing, and during such residence only; but the 28 Geo. III. enables the justices of the peace of any county, riding, or liberty, in general or quarter sessions assembled, to grant a licence to any person making application by petition, for the performance of dramatic pieces at any place within their jurisdictions, for any number of days not exceeding sixty, to commence within the next six months, and to be within the space of such four months as shall be specified in the said licence; so as there be only one licence in use at the same time within the jurisdiction so given, and so as such place be not within twenty miles of London, Westminster, or Edinburgh, or eight miles of any patent or licensed theatre, or ten miles of the residence of his majesty, or of any place within the same jurisdiction, at which, within six months preceding, a licence shall have been had and exercised, or within fourteen miles of either of the universities of Oxford and Cambridge, or within two miles of the outward limits of any city, town, or place, having peculiar jurisdiction; and so also as no such licence shall have been had and exercised at the same place, within eight months then next preceding. But no such licence can be

granted to be exercised in any city, town, or place, having peculiar jurisdiction, unless proof shall be made that the majority of the justices acting for such peculiar jurisdiction have, at a public meeting, signed their consent and approbation to the said application, or unless an express condition shall be therein inserted, that the same shall not be valid and effectual until it shall have been approved by the majority of them at a meeting holden expressly for taking the same into consideration. And no such licence can be granted by the justices within any city, town, or place, unless notice shall have been given by the person applying, at least three weeks before the application, to the mayor, bailiff, or chief civil officer, of his intending to make it.

VAGRANTS. Under this general denomination are included three classes of persons, called, in strict language, idle and disorderly, rogues and vagabonds, and incorrigible rogues.

In the first class, that of *idle and disorderly persons*, are comprized, by (17 Geo. II. c. 5. which is intitled "an act to amend " and make more effectual the laws relating to rogues and vagabonds, and other idle and disorderly persons, and to houses " of correction;") all persons who threaten to run away and leave their wives and children to the parish; and all persons who shall unlawfully return to such parish or place from whence they have been legally removed by order of the justices of the peace, without bringing a certificate from the parish or place whereunto they belong; and also persons who, not having wherewith to maintain themselves, live idle, without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they then are; and also all persons going about from door to door, or placing themselves in the streets, highways, or passages, to beg or gather alms in the parishes or places where they dwell. And by 32 Geo. III. c. 45. it is enacted, that if it be made appear to any two justices that any poor person shall not use proper means to get employment, or, if he is able to work, by his neglect of work, or by spending his money in ale-houses or places of bad repute, or in any other improper manner, shall not apply a proper portion of the money earned by him towards the maintenance of his wife and family, by which wilful default or neglect they, or any of them, shall become chargeable to their parish or township, he shall be considered as an idle and disorderly person.

Rogues and Vagabonds are by the same statute of Geo. II. thus described: It shall be lawful for any person to apprehend and carry before a justice of the peace any persons going about from door to door, or placing themselves in streets, highways, or passages, to beg or gather alms in the parishes or places where they

they dwell ; and if they shall resist, or escape from the person apprehending them, they shall be subject to punishment as rogues and vagabonds. All persons going about as patent gatherers, or gatherers of alms, under pretence of loss by fire, or other casualty ; or going about as collectors for prisons, jails, or hospitals ; all fencers, and bear wards ; all common players of interludes ; and all persons who shall for hire, gain, or reward, act, represent, or perform, or cause to be acted, represented, or performed, any entertainment of the stage, not being authorised by law ; all minstrels, jugglers, persons pretending to be gypsies, or wandering in the habit or form of Egyptians, or pretending to have skill in physiognomy, palmistry, or like crafty science, or pretending to tell fortunes, or using any subtil craft to deceive and impose on any of his majesty's subjects, or playing or betting at any unlawful games or plays ; and all persons who run away and leave their wives or children, whereby they become chargeable to any parish or place ; and all petty chapmen and pedlars, wandering abroad, not being duly licensed or otherwise authorised by law ; and all persons wandering abroad, and lodging in ale-houses, barns, out-houses, or in the open air, not giving a good account of themselves ; and all persons wandering abroad and begging, pretending to be soldiers, mariners, seafaring men, or pretending to go to work in harvest ; and all other persons wandering abroad and begging. By the 23 Geo. III. c. 88. the description is extended to any person who shall be apprehended, having upon him any pick-lock key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any house, or out-house, or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person ; or shall be found in or upon any dwelling house, or out-house, or in any inclosed yard or garden, or area belonging to any house, with intent to steal any goods. And also by 27 Geo. III. c. 1. to persons dealing illegally in lottery tickets or shares, or in any other adventures dependant on the lottery. The 32 Geo. III. c. 53. recites, that divers ill-disposed and suspected persons, and reputed thieves, frequent the avenues to places of public resort, and the streets and highways, with intent to commit felony ; and although their evil purposes are sufficiently manifest, the power of justices of the peace to demand of them sureties for their good behaviour has not been of sufficient effect, and therefore enacts, that any constable, headborough, patrole, or watchman, may apprehend such persons, and convey them before any justice of the peace ; and if it shall appear that they are of evil fame, and reputed thieves, and they are not able to give a satisfactory account of themselves, and it

shall also appear to the satisfaction of the justice, that there is just ground to believe they were in such avenue, street, or highway, with such intent as aforesaid, they shall be deemed rogues and vagabonds, within the statute 17 Geo. II. But if the suspected persons will enter into a recognizance with two sureties, they may appeal to the next session, and no punishment can be inflicted on them exceeding six months imprisonment and hard labour.

But the stat. of Geo. II. excepts from its operation soldiers having lawful certificates, and mariners duly licensed, and persons going abroad to work in the time of harvest, having a certificate in writing, signed by the minister and one of the church-wardens, or chapel-wardens, or one of the overseers of the poor of the parish, chapelry, or place, where they respectively inhabit.

Of *incorrigible Rogues*, one description is taken from the 13 Geo. I. c. 33., where, under the denomination of end-gatherers, is noticed a class of persons, who, under pretence of purchasing or collecting the useless refuse of woollen manufacture, committed various frauds and depredations; these are by several statutes declared incorrigible rogues. In the same class, by the 17 Geo. II. c. 5., are included all persons apprehended as rogues and vagabonds, and escaping from the persons apprehending them, or refusing to go before a justice of the peace, or to be examined upon oath before him, or refusing to be conveyed by any pass, or knowingly giving a false account of themselves on such examination, after warning; and all rogues or vagabonds who break or escape out of any house of correction before the expiration of their term; and all persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences.

By the act of Geo. II. any person may apprehend a vagrant begging in the place where he dwells; and in general any person may apprehend and convey to a justice or constable any vagrant. A constable neglecting his duty in this particular may be punished; and if there is no constable, any other person, being charged by a justice of the peace so to do, who shall refuse or neglect to use his best endeavours to apprehend or to carry such offender before some justice, shall forfeit ten shillings to the use of the poor, to be levied by distress and sale of the offender's goods.

A justice may order a reward of five shillings to be paid by the overseer of the parish to him who shall apprehend any such offender; and for apprehending a rogue or vagabond, whether by a constable or any other person, the justice may order the high constable to pay a reward of ten shillings, to be returned out

of

of the county rate ; but these rewards are not to be paid unless such rogue or vagabond is punished.

The justices are also by the same statute of Geo. II. four times at least in every year, or oftener if necessary, to meet in their respective divisions, and by their warrant command the constables or other peace officers of every hundred, parish, town, and hamlet, who shall be assisted with sufficient men of the same places, to make a general privy search in one night, throughout their respective limits, for the finding and apprehending of rogues and vagabonds, whom they shall cause to be brought before any justice ; and he is to inform himself by examination on oath of the persons apprehended, or of any other person, of their condition and circumstances, and of the parish or place where they were last legally settled, and transmit the substance in writing, subscribed or signed by the persons examined, to the next general or quarter sessions, to be filed and kept on record ; and such justice is to order all the persons so apprehended to be publicly whipped, or sent to the house of correction, until the next general or quarter sessions, or for any less time. By another stat. 25 Geo. II. c. 36., the justice may examine not only as to settlement, but as to the means by which such parties get their living, and if they shall not make it appear to his satisfaction, that they have honest means of gaining their livelihood, or procure some responsible housekeeper to appear to their character, and give security for their appearance at some other day to be fixed for that purpose, to commit them to prison or the house of correction, for any time not exceeding six days ; and in the mean time to order the overseers of the poor of the parish or place in which the persons were apprehended, to insert an advertisement in some public paper, describing them, and any thing or things found upon them, which they shall be suspected not to have come honestly by, and mentioning the place to which such person is committed, and specifying the time and place when and where such persons are to be again brought up to be re-examined ; and if no information shall be then laid against them, they shall be discharged or otherwise dealt with according to law.

After vagrants have undergone the punishments directed by law, they are to be *passed*, by warrant under the hand and seal of a justice, to their legal settlement. The pass specifies how they are to be conveyed, whether by horse, cart, or on foot, and the rate of allowance to be made, which is settled at a general or quarter session. The pass is first given to the constable or other officer of the place where the vagrant is ; he delivers the vagrant, with the pass and a duplicate of his examination, to the constable or other officer of the first town, parish, or place, in

the next county, riding, division, corporation, or franchise, in the direct way to the place to which such persons are to be conveyed, taking his receipt for the same; and such constable, or other officer must, without delay, apply to some justice of the peace, who makes the like certificate as before, (*mutatis mutandis*) and delivers it to the constable; and so on to the journey's end. If there is reason to suspect that the pass is false or forged, the officers to whom the vagrant is delivered may carry him before a justice, and if the suspicion is well founded, he will be dealt with as an incorrigible rogue. The high constable pays the expence incurred to the petty constable, and receives it again from the treasurer of the county, out of the county rate. Every vagrant so passed, must previously have been publicly whipped, or committed to the house of correction for not less than seven days; nor can they be passed unless convicted of some act of vagrancy; but females are in no case to be whipped. And as it was found that the constables were negligent in conveying of vagrants, the stat. 32 Geo. III. directed that the justices at session might order all rogues and vagabonds to be passed by the master of the house of correction, or his servants. The parish or place to which such person is passed may set him to work, and if he refuses, they may carry him before a justice, to be sent to the house of correction to hard labour.

With respect to *Scotch vagrants*, the 17 Geo. II. c. 5. directs, that the constable or other officer of any parish or place within the counties of Cumberland, Northumberland, Durham, or town of Berwick-upon-Tweed, shall, upon any person being delivered to them by a pass and examination, whose place of legal settlement is in Scotland, deliver the said examination to the clerk of the peace for such county, and convey such person with the said pass into the next adjoining shire, or stewartry, or place in Scotland, and deliver him to some constable or other officer; and in case any such vagrant, after being so sent and conveyed into Scotland, shall be found wandering, begging, or misbehaving himself in England, he shall be deemed an incorrigible rogue, and punished accordingly.

Vagrants belonging to *Ireland, Man, Jersey, Guernsey, or Scilly*, when arrived at any sea-port in England or Wales whence a packet sails for any of those places, are to be conveyed across, in pursuance of a warrant under the hand and seal of a justice, for such price as shall have been fixed by the justices in session; and on refusal the master of the packet forfeits 5*l*.

Lunatic Vagrants are rather objects of the poor laws than of the criminal code; it is however provided in the general statute of Geo. II. that two or more justices of the peace, where such lunatic or mad person shall be found, may by warrant directed

rected to the constables, church-wardens, and overseers of the place, cause him to be apprehended, and kept safely locked up, and, if necessary, chained, in some secure place, within the county or precinct, if his last legal settlement was in any parish, or place, within such county or precinct; but if such settlement is not there, then he is to be sent to the place of his last legal settlement by a pass, and locked up or chained by warrant of two justices of the county or precinct to which he is so sent; and the reasonable charges of removing, keeping, maintaining, and curing him, are to be paid by order of two justices, directing the church-wardens or overseers where any of his goods, chattels, lands, or tenements shall be, to seize and sell so much of the goods, or receive so much of the rents of the lands and tenements as is necessary to pay the same; and to account for what is so seized, sold, or received, to the next quarter sessions: but if such person has not an estate to pay and satisfy the same, then such charges must be paid by the parish, or place to which he belongs, by order of two justices, directed to the churchwardens or overseers for that purpose.

With respect to *discharged convicts*, the 32 Geo. III. c. 45. enacts, that any of his majesty's judges at the assizes, and the justices at the general or quarter session, or any justice of the peace, may order any convict, upon his discharge from prison, to be conveyed by pass under hand and seal like other persons to be passed; and they may do the same by any person acquitted or discharged by proclamation or otherwise, stating in the pass the fact of discharge or acquittal; and the pass is to be given without any fee.

When vagrants are committed to the house of correction, and no settlement for them can be found, the justices at session may continue them in custody until they can place them out. And when vagrants who are committed to the house of correction, have any children above seven years old, the justices at session may order them to be placed out as servants or apprentices till the age of twenty-one, or any less time; and if the offender be afterward found with the same child he shall be deemed an incorrigible rogue. And if a woman wandering and begging, is delivered of a child, which is likely to become chargeable, the church-wardens and overseers may take her before a justice, who may commit her till the next session, when she may be ordered to be publicly whipped, and further imprisoned for six months; the church-wardens and overseers to be repaid their expences by the treasurer of the county, and the child, if a bastard, shall not be settled in the place where born, nor sent there for want of settlement; but

but the settlement of the mother shall be the settlement of the child.

The *punishment* of vagrants is in some cases very severe. When an offender is committed by a justice to the house of correction, until the next general or quarter sessions; and the justices at such sessions adjudge him a rogue, or vagabond, or an incorrigible rogue; they may order him to be detained in the house of correction to hard labour not exceeding two years, nor less than six months; and during the time of his confinement to be corrected by whipping in such manner as they may think fit; and if such person, being a male, is above the age of twelve years, they may send him to be employed in his majesty's service either by sea or land. And in case any incorrigible rogue, so ordered to be detained and kept in the house of correction, shall before the expiration of the time break out, or shall offend again in like manner, he shall be deemed guilty of felony and transported for any term not exceeding seven years. Those who knowingly harbour any rogue, vagabond, or incorrigible rogue, are subject to a penalty, not less than ten shillings, nor more than forty shillings, to be paid half to the informer, and half to the poor.

In the offences lately stated, malice against individuals does not form the principal point of consideration, nor perhaps does it in the case of *neglecting quarantine*, which has been mentioned in this volume, page 277, and which is in some instances capital felony. The care to protect the public against the effects of carelessness or selfishness which dictated those laws, has also occasioned various other regulations of a local, and some of a temporary nature, which it is not necessary here to enumerate.

Offences against the *revenue* form a considerable branch of the criminal and penal code. Some have been already noticed in a general way, as those against the customs and excise, at pages 114 and 122; and the stamp duties, at page 123 of this volume. To enter into a minute detail would extend beyond all reasonable bounds. One however must be noticed.

OWLING. This offence, so called from its being usually carried on in the night, is the offence of transporting wool or sheep out of this kingdom, to the detriment of its staple manufacture. It was forbidden at common law, and more particularly by various statutes, which were all repealed by the 28 Geo. III. c. 38. and an infinite variety of regulations and restrictions upon the subject was consolidated. This act is given almost at length in the fourth volume of Burn, tit.

tit. Woollen Manufacture, c. 2.; but as it contains nearly one hundred long clauses, it is impossible to give an adequate representation of it in an abridgment: the principal prohibitions are, that if any person shall send or receive any sheep, on board a ship or vessel, to be carried out of the kingdom, the sheep and vessel are both forfeited, and the person offending shall forfeit 3*l.* for every sheep, and suffer solitary imprisonment for three months. But wether sheep, by a licence from the collector of the customs, may be taken on board for the use of the ship's company. And every person, who shall export any wool or woollen articles slightly made up, so as easily to be reduced to wool again, or any fuller's earth, or tobacco-pipe-clay; and every carrier, ship-owner, commander, mariner, or other person, who shall knowingly assist in exporting, or in attempting to export these articles, shall forfeit three shillings for every pound weight, or the sum of 50*l.* in the whole, at the election of the prosecutor, and shall also suffer solitary imprisonment for three months. But wool may be carried coastwise upon being duly entered, and security being given, according to the directions of the statute, to the officer of the port whence the same shall be conveyed. And the owners of sheep, which are shorn within five miles of the sea, or within ten miles in Kent and Sussex, cannot remove the wool without giving notice to the officer of the nearest port as directed by statute.

Offences against trade are also restricted by law. Those of fraudulent bankruptcy, and fraudulent insolvency, will be considered in another division; and that of usury has been noticed at page 189 of this volume.

SEDUCING ARTIFICERS. To prevent the effect of those arts by which the kingdom might be deprived of some of its most valuable subjects, the legislature has provided several statutes against those who, by promises or solicitations, attempt to influence artificers to transport themselves to foreign countries. The 5 Geo. I. c. 27. enacts, that if any person shall contract with, entice, endeavour to persuade or solicit, any manufacturer or artificer of or in wool, iron, steel, brass, or any other metal; clock-maker, watch-maker, or any other artificer or manufacturer of Great Britain, to go out of this kingdom into any foreign country out of his majesty's dominions, he shall be fined any sum not exceeding one hundred pounds for the first offence, and imprisoned three months, and until such fine shall be paid; and if convicted a second time, fined at the discretion of the court, and imprisoned twelve months, and until such fine shall be paid. And if any of his majesty's subjects within this kingdom, being such artificer or manufacturer as aforesaid, shall go into any foreign country, to exercise or teach his
trade

trade or manufacture to foreigners; or in case any such subjects being in any such foreign country, shall not return into this realm within six months next after warning shall be given to him by the ambassador, envoy, resident minister, or consul of the crown, or any person by him authorized, or by one of his majesty's secretaries of state, and from thenceforth continually inhabit and dwell within this realm; then every such person shall be incapable of taking any legacy that shall be devised to him, or of being an executor or administrator; and of taking any lands, tenements, or hereditaments, by descent, devise, or purchase; and forfeit all his lands, tenements, hereditaments, goods, and chattels to his majesty's use; and shall from thenceforth be, and be deemed an alien out of his majesty's protection. On complaint made upon oath before any justice of the peace, that any person is endeavouring to seduce or draw away any such manufacturer or artificer as aforesaid, the justice may send forth his warrant to bring the person before him; and if it shall appear that the party is guilty, the justice may bind him to appear at the next assizes, general jail delivery, or quarter sessions of the peace, with reasonable sureties for his appearance; or commit the person refusing surety to jail until the next assizes or quarter sessions; and in case any such artificer or manufacturer shall be convicted upon any indictment of any such promise or contract, or preparation to go abroad, he shall give such security not to depart, as the court shall think reasonable, and be imprisoned until such security shall be given.

By 23 George II. c. 13. the same offence with respect to any manufacturer, workman, or artificer of or in wool, mohair, cotton, or silk, or any of those materials mixed one with another, or in iron, steel, brass, or any other metal, or any clock-maker, watch-maker, or any other manufacturer, workman, or artificer in any other of the manufactures of Great Britain or Ireland of what nature or kind soever, and is punished with a forfeiture 500*l.* for every individual seduced or attempted so to be, and twelve months imprisonment; and for a second offence 1000*l.* and two years imprisonment. By the 22 Geo. III. c. 60. the seduction of any artificer or workman concerned or employed, or who shall have worked at or been employed in printing calicoes, cottons, muslins, or linens of any sort, or in making, or preparing any blocks, plates, engines, tools, or utensils for such manufacture, is punished in the same manner, and one half of the forfeiture is given to the king, the other to the informer. By 25 Geo. III. c. 67. those who contract with, entice, persuade, or endeavour to seduce and encourage any artificer or workman in the iron or steel

steel manufactures; or persons employed in making or preparing any tools or utensils for such manufacture, to go out of Great Britain (except to Ireland) are subjected to the like penalties; which are to go, one half to the king, the other to such officer of the customs as shall sue and prosecute for the same, after deducting the charges of prosecution from the whole.

EXPORTATION OF TOOLS. Against the practice of exporting tools, so likely to be detrimental to the manufacturing interest, provision is made by the 23 Geo. II. c. 13.; the 14 Geo. III. c. 71; the 21 Geo. III. c. 37; the 22 Geo. III. c. 60. and the 25 Geo. III. c. 67. These statutes enact with great minuteness, that heavy penalties shall be imposed on those who export the tools employed in most of the manufactures of this kingdom; the penalty is, in most cases, forfeiture of the property, and a fine of 200*l.*; and every care is taken to restrain captains of ships from receiving such freight on board, and to prevent custom-house officers from allowing them to pass. The number and strictness of the acts shew how much importance the legislature has attached to this object.

MONOPOLY. A monopoly is an allowance by the king, to a particular person, or persons, of the sole buying, selling, making, working, or using of any thing, whereby the subject in general is restrained from the freedom of manufacturing or trading which he had before. Monopoly differs from *ingrossing* only in this, that monopoly is by patent from the king, and ingrossing by the act of the subject, between party and party. Monopolies had been carried to an enormous height during the time of Elizabeth, and were heavily complained of by Sir Edward Coke, in the beginning of the ensuing reign: but were in a great measure remedied by 21 Jas. I. c. 3. which declares them to be contrary to law, and void, (except as to patents, not exceeding the grant of fourteen years, to the authors of new inventions; and except also patents concerning printing, saltpetre, gunpowder, great ordnance, and shot;) and monopolists are punished with treble damages and double costs, to those whom they attempt to disturb; and, if they procure any action, brought against them for these damages, to be stayed by any extra-judicial order, other than of the court wherein it is brought, they incur the penalties of a *præmunire*.

FORESTALLING, INGROSSING, AND REGRATING. These were all offences at the common law; for it was considered that all endeavours to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by

buying

buying and selling again the same thing in the same market, or by any such like devices, are highly criminal; and all such acts anciently came under the general notion of forestalling, which included all kinds of offences of this nature. *Forestalling* was described by stat. 5 and 6 Edw. VI. c. 14. to be the buying or contracting for any merchandize or victual coming in the way to market; or dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price, when there; any of which practices make the market dear to the fair trader. *Regrating* was described by the same statute to be the buying of corn, or other dead victual, in any market, and selling it again in the same market, or within four miles of the place; for this also enhances the price of the provisions, as every successive seller must have successive profit. *Ingrossing* was also described to be the getting into one's possession, or buying up large quantities of corn or other dead victuals with intent to sell them again. This must of course be injurious to the public, by putting it into the power of one or two rich men to raise the price of provisions at their own discretion. And so the ingrossing of any other commodity, with an intent to sell it at an unreasonable price, is an offence indictable and finable at the common law. The general penalty for these three offences by the common law (for all the statutes concerning them were repealed by the 12 Geo. III. c. 71.) is, as in other minute misdemeanors, discretionary fine and imprisonment. The repeal of the statutes misled many persons into an opinion that the penalty of the law against these offences was also abolished, but the court of king's bench decided otherwise, and in some cases enforced severe punishments.

COMBINATIONS TO RAISE THE PRICE OF VICTUALS. The intent of the laws against forestalling, ingrossing, and regrating evidently is, to prevent the undue enhancement of the necessities of life. To this end many statutes still exist, enabling magistrates to regulate the price of many commodities, not by any arbitrary standard of their own surmising or inventing, but according to the evidence of facts and visible state of the market. They also are empowered to exercise an inspection over those who sell certain commodities by weight and measure, preventing the arts of fraud, and punishing those who seek to enrich themselves by dishonesty. Yet, as the vigilance of the most upright magistrates might be evaded by the efforts of many dishonest individuals, combinations among victuallers or artificers, to raise the price of provisions, or any commodities, or the rate of labour, are in many cases severely punished by particular statutes; and in general, by 2 and 3 Edw. VI.

c. 15. with the forfeiture of 10*l.* or twenty days imprisonment, with an allowance only of bread and water, for the first offence; 20*l.* or the pillory, for the second; and 40*l.* for the third, or else the pillory, loss of one ear, and perpetual infamy.

Many offences are committed in matters relating immediately to the administration of justice.

PERJURY. Perjury, by the common law, is said to be a wilful false oath, by one who, being lawfully required to depose the truth in any proceeding in a course of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not.

The perjury must be *wilful*; that is, the offence must be committed with some deliberation; for if, upon the whole circumstances of the case, it appears probable that it was owing rather to weakness than to perverseness, that it was occasioned by surprize, or inadvertency, or a mistake of the true state of the question, it will not amount to voluntary and corrupt perjury. False oaths, to fall within the denomination and punishment of perjury, must be taken before those who are intrusted with the administration of public justice, in relation to some matter before them in debate. And not only such persons are indictable for perjury, who take a false oath in a court of record, but also all those who forswear themselves in a matter judicially depending before any court of equity, or spiritual court, or any other lawful court, whether the proceedings therein be of record or not, or whether they concern the interest of the king or subject. Nor is the punishment confined to such oaths as are taken upon judicial proceedings, but extends to all such as any way tend to abuse the administration of justice. But no oath in a mere private matter, howsoever wilful or malicious it may be, is punishable as perjury in a criminal prosecution; for private injuries are left to be redressed by private actions; and upon this ground it has been holden, that a false oath taken by one upon the making of a bargain, that the thing sold is his own, is not punishable as perjury; nor does it extend to any promissory oaths; consequently no officer, public or private, who neglects to execute his office in pursuance of his oath, or acts contrary to the purport of it, is indictable for perjury in respect of such oath; yet his offence is highly aggravated by being contrary to his oath, and therefore he is liable to the severer fine on that account. No oath taken before persons acting merely in a private capacity, or before those who take upon them to administer oaths of a public nature, without legal authority for so doing, or before those who are authorized to administer some kind of oaths,
but

but not those which happen to be taken before them, or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth unwarranted and merely void, can ever amount to perjuries in the eye of the law, because they are of no force, but altogether idle. It is said not to be essentially necessary that the fact sworn should be false; for howsoever the thing sworn may happen to prove agreeable to the truth, yet if it were not known to be so by him who swears it, his offence is altogether as great as if it had been false, in as much as he wilfully swears, that he knows a thing to be true, which at the same time he knows nothing of, and impudently endeavours to persuade those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he. It is also said, that no oath shall amount to perjury unless it be sworn absolutely and directly; and therefore, that he who swears a thing according as he *thinks, remembers, or believes*, cannot in respect of such an oath be found guilty; but perhaps this opinion is not altogether warranted, as it has, in several instances, been decided, that belief was to be considered as an absolute term, and that an indictment might be supported upon it. If the oath for which a man is indicted of perjury, be wholly foreign from the purpose, or altogether immaterial, and neither any way pertinent to the matter in question, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury, because it is merely idle and insignificant.

SUBORNATION. Subornation of perjury is the offence of procuring another to take such a false oath, as constitutes perjury in the principal.

The *punishment* of perjury and subornation, at common law, has been various. It was anciently death; afterwards banishment, or cutting out the tongue; then forfeiture of goods; and now is fine and imprisonment, and never more to be capable of bearing testimony. By the stat. 5 Eliz. c. 9. if the offender is prosecuted, it inflicts the penalty of perpetual infamy and a fine of 40*l.* on the suborner; and in default of payment, imprisonment for six months, and to stand with both ears nailed to the pillory. Perjury itself is thereby punished with six months imprisonment, perpetual infamy, and a fine of 20*l.* or to have both ears nailed to the pillory; but the prosecution for the offence is usually carried on at common law; especially as, to the penalties before inflicted, the 2 Geo. II. c. 25. superadds a power, for the court to order the offender to

to be sent to the house of correction for a term not exceeding seven years, or to be transported for the same period, and makes it felony without clergy to return or escape before the time is expired. Different acts of parliament also assign to various modes of perjury and subornation express and peculiar punishments. Thus by 31 Geo. II. c. 10. taking or procuring any person to take a false oath for the purpose of obtaining the probate of a will, or letters of administration, in order to receive the pay or prize money of sailors, is felony without clergy. By 28 Geo. II. c. 13. for the relief of insolvent debtors; if any sheriff or other officer perjure himself, in taking the oaths directed by the act, he shall forfeit 500*l*. And if the offence be committed by a prisoner or other person intending to take the benefit of the act, it is felony without clergy.

By the 23 Geo. II. c. 11. the justices of assize or *nisi prius*, or general gaol delivery, or any of the great sessions of Wales, or of the counties palatine; are authorized (sitting the court, or within twenty-four hours after) to direct any person examined as a witness upon any trial before them, to be prosecuted for perjury, in case there shall appear a reasonable cause; and assign to the party injured, or other person undertaking such prosecution, counsel who shall do their duty without any fee, gratuity, or reward. Such prosecution is also exempted from tax, or duty, and fees of court, and the clerk of the assize is ordered to give the prosecutor a certificate of the same, with the counsels' names, &c. And by 12 Geo. I. c. 29., if any person convicted of perjury, or subornation of perjury, shall act or practise as an attorney or solicitor, or agent, in any suit or action, in any court of law or equity, the judge or judges shall, upon complaint or information, examine the matter in a summary way in open court, and if it shall appear that the party has offended contrary to this act, shall cause him to be transported for seven years.

BARRATRY. Common barratry is the offence of frequently exciting and stirring up suits and quarrels, either at law, or otherwise. The punishment, in a common person, is by fine and imprisonment; but if the offender belongs to the profession of the law, he may be disabled from practising for the future. And indeed the 12 Geo. I. c. 29., places attornies and solicitors, convicted of barratry, on the same footing as those who are guilty of perjury or subornation. To this head may also be referred the offence of suing another in the name of a fictitious plaintiff, either one not in being at all, or one who is ignorant of the suit; in the king's superior courts it is, as a high contempt, to be punished at their discretion; but in courts of a lower degree, where the authority of the judges is not

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equally extensive, it is directed by statute 8 Eliz. c. 2. to be punished by six months imprisonment, and treble damages to the party injured.

MAINTENANCE. Maintenance is an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it. The punishment by common law is fine and imprisonment; and by stat. 32 Hen. VIII. c. 9., a forfeiture of 10*l.*; but a man may lawfully maintain the suit of his near kinsman, servant, or poor neighbour, out of charity and compassion.

CHAMPERTY. Champerty, *campi-partitio*, is a species of maintenance, and punished in the same manner; being a bargain with a plaintiff or defendant, *campum partire*, to divide the land or other matter sued for between them, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own expence. In another sense of the word, it signifies the purchasing of a suit, or right of suing, a practice much abhorred by the law. Hitherto also must be referred the provision of the statute 32 Hen. VIII. c. 9. that no one shall sell or purchase any pretended right or title to land, unless the vendor has received the profits for one whole year before such grant, or has been in actual possession of the land, or of the reversion or the remainder, on pain that both purchaser and vendor shall each forfeit the value to the king and the prosecutor.

COMPOUNDING PENAL ACTIONS. By 18 Eliz. c. 5., if any person informing under pretence of any penal law, makes any composition without leave of the court, or takes any money or promise from the defendant to excuse him, he shall forfeit 10*l.*, shall stand two hours upon the pillory, and shall be for ever disabled to sue on any popular or penal statute.

EMBRACERY. Embracery is an attempt to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for the person embracing is by fine and imprisonment; and for the juror so embraced, if it be by taking money, perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value. The false verdict of jurors, whether occasioned by embracery or not, was anciently considered as criminal, and therefore exemplarily punished by attain.

BRIBERY. This offence, as applied to courts, is when a judge or other person concerned in the administration of justice takes any undue reward to influence his behaviour in his office. It is punished, in inferior officers, with fine and imprisonment; and in those who offer a bribe, though not taken, the same; but in judges, especially the superior ones, it has always been looked upon as a heinous offence, and the chief justice

justice Thorpe was hanged for it in the reign of Edward III. By a stat. 11 Hen. IV. all judges and officers of the king, convicted of bribery, shall forfeit treble the bribe, be punished at the king's will, and discharged from his service for ever. It has been held to be a misdemeanor to offer a sum of money to the first lord of the treasury, for the purpose of obtaining an office or appointment under government, by his interest and recommendation.

NEGLECT OF DUTY. The negligence of public officers intrusted with the administration of justice, as sheriffs, coroners, constables, and the like, makes the offender liable to be fined; and in very notorious cases will amount to a forfeiture of his office, if it be a beneficial one. Also the omitting to apprehend persons who offer stolen iron, lead, and other metals to sale, is a misdemeanor, and punished by a stated fine, or imprisonment, in pursuance of the statute 29 Geo. II. c. 30.

EXTORTION. Extortion is an abuse of public justice, which consists in any officer unlawfully taking by colour of his office, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment, and sometimes a forfeiture of the office.

OPPRESSION. The oppression and tyrannical partiality of judges, justices, and other magistrates, in the administration, and under the colour of their office, when prosecuted, either by impeachment in parliament, or by information in the court of king's bench, (according to the rank of the offenders,) is severely punished with forfeiture of their offices, (either consequential or immediate,) fine, imprisonment, or other discretionary censure, regulated by the nature and aggravation of the offence committed.

CONSPIRACY. Conspirators, in the words of the statute 33 or more properly 21 Edw. I. "be they that do confeder
"or bind themselves by oath, covenant or other alliance,
"that every of them shall aid and bear the other, falsely
"and maliciously to indict, or cause to indict, or falsely
"to move and maintain pleas; and also such as cause
"children within age to appeal men of felony, whereby
"they are imprisoned and sore grieved; and such as retain
"men in the country with liveries or fees for to maintain
"their malicious enterprizes;" and this extends as well to the takers as to the givers; and to stewards and bailiffs of great lords, who by their seignior, office, or power, undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves. From this definition it seems to follow,

that not only those who actually cause an innocent man to be indicted, and tried upon the indictment whereupon he is lawfully acquitted, are conspirators, but those also who barely conspire to indict a man falsely and maliciously, whether they do any act in prosecution of such conspiracy or not. Formerly the remedy was by writ of conspiracy, but that is now disused, and an action on the case is frequently brought for a malicious prosecution, in which it is incumbent on the plaintiff to shew that the original suit, wheresoever instituted, is at an end; for this purpose he must produce and prove a copy of the acquittal on record, the substance of the evidence, the charges of acquittal, and the circumstances which shew that the prosecution was malicious and without probable cause. But if the prosecution was for a misdemeanor, a copy of the record is not necessary to be granted by the court to found the action. The conspirators may also be indicted at the suit of the king, and by the ancient common law, if they accused another of a matter which might touch his life, were to receive what is called the *villainous judgment*, that is, they were to lose the freedom and franchise of the law, whereby they were disabled to be put upon any jury, or to be sworn as witnesses, or even to appear in person in any of the king's courts; and also that their houses, lands, and goods should be seized into the king's hands, and their houses and lands estreped and wasted, their trees rooted up and rased, and their bodies imprisoned. In some books this is said to have been the proper judgment upon every conviction of conspiracy at the suit of the king, without any restrictions to such as endangered the life of the party. There has been no instance of the villainous judgment since the reign of Edward III. The usual mode of punishment at present is by pillory, fine, imprisonment, and surety for good behaviour. The offence is within the jurisdiction of the quarter sessions; and on the motion in arrest of judgment, the defendant must be personally present in court.

LIBELS. A libel is defined a malicious defamation, expressed either in printing or writing, or by signs, pictures, &c. tending either to blacken the memory of one who is dead, or the reputation of one who is alive, and thereby exposing him to public hatred, contempt, and ridicule. It is termed *Libellus famosus seu infamatoria scriptura*, and from its pernicious tendency has been held a public offence at common law; for men not being able to bear the having their errors exposed to public view, were found by experience to revenge themselves on those who made sport with their reputations; from whence arose duels and breaches of the peace; and hence written scandal has been held in the greatest detestation, and has received the utmost

discouragement in the courts of justice. This species of defamation is usually termed *written scandal*, and hereby receives an aggravation, in that it is presumed to have been entered upon with coolness and deliberation, and to continue longer, and propagate wider and further, than any other scandal. But it is clearly agreed, that not only written or printed scandal comes within the notion of a libel, but it may be also applied to any defamation whatsoever, expressed either by signs or pictures; as, by fixing up a gallows at a man's door, or elsewhere; or by painting him in a shameful and ignominious manner, as, by exposing a man and his wife by a skimmington or riding, though a special custom is alleged for such practice. And not only charges of a flagrant nature, and which reflect a moral turpitude on the parties, are libellous, but also such as set him in a scurrilous, ignominious light; for these equally create ill blood, and provoke the parties to acts of revenge, and breaches of the peace. Libels on persons employed in a public capacity, are said to receive an aggravation, as they tend to scandalize the government, by reflecting on those who are intrusted with the administration of public affairs, which not only endangers the public peace, as all other libels do, by stirring up the parties immediately concerned in it to acts of revenge, but also have a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition.

It is also agreed, that not only scandal expressed in an open and direct manner, but also such as is expressed in allegory and irony, amounts to a libel; and that the judges are to understand it in the same manner as others do, without any strained endeavours to find out loop-holes, or to palliate the offence, which in some measure would be to encourage scandal. It has also been resolved, that a defamatory writing, expressing only one or two letters of a name in such a manner that from what goes before, and follows after, it must needs be understood to signify such a person in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if strained to any other meaning, is as properly a libel as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions; and it is a ridiculous absurdity to say, that a writing which is understood by the meanest capacity, cannot possibly be understood by judge or jury. Obscene books are punishable as libels, and so are books reflecting upon christianity.

A person complaining of a libel, may bring his action for damages, or may indict, or move the court of king's bench for a criminal information. In the latter mode of proceeding,

it is necessary, in order to induce the court to interpose its extraordinary jurisdiction, that the party should state in his affidavit, that the allegations complained of are false. In an indictment or criminal prosecution for a libel, the party cannot justify that the contents thereof are true, or that the person upon whom it is made had a bad reputation; since the greater appearance there is of truth in any malicious invective, so much the more provoking it is; for as lord Coke observes, in a settled state of government the party grieved ought to complain for every injury done him, in the ordinary course of law, and not by any means to revenge himself by the odious course of libelling or otherwise. Also, it seems now settled, that no scandal in writing is any more justifiable in a civil action brought by the party to vindicate the injury done him, than in an indictment or information at the suit of the crown; for though, in actions for words, the law, through compassion, admits the truth of the charge to be pleaded as a justification, yet this tenderness is not to be extended to written scandal, in which the author acts with more coolness; and deliberation gives the scandal a more durable stamp, and propagates it wider and further; whereas in words, men often in a heat and passion say things which they are afterwards ashamed of, and though they seem to act with deliberation, yet the scandal sooner dies away and is forgotten; and therefore, from the greater degree of mischief and malice attending the one than the other, though the law allows the party to justify in an action for words, yet it does not for written scandal; whence it follows, that the only favour truth affords in such a case is, that it may be shewn in mitigation of damages in an action, and of the fine upon an indictment or information.

It had frequently been determined by the court of king's bench, that the only questions for the consideration of the jury, in criminal prosecutions for libels, were the fact of publication, and the truth of the inuendos, that is, the truth of the meaning and sense of the passages of the libel, as stated and averred in the record, and that the judge or court alone was competent to determine whether the subject of the publication was or was not a libel. But the legality of this doctrine having been much controverted, the 32 Geo. III. c. 60. was passed, intituled, "an act to remove doubts respecting the functions of juries in cases of libels." It declares and enacts, that on every trial of an indictment or information for a libel, the jury may give a general verdict of guilty or not guilty, upon the whole matter in issue, and shall not be required or directed by the judge, to find the defendant guilty, merely on the proof of the publication of the paper charged to be a libel, and of the sense ascribed to it

it in the record. But the statute provides, that the judge may give his opinion to the jury respecting the matter in issue, and the jury may at their discretion, as in other cases, find a special verdict, and the defendant, if convicted, may move the court, as before the statute, in arrest of judgment. But this statute does not express that the truth of the scandal shall be a defence, and is wholly silent as to actions of *scandalum magnatum*, or for a libel.

Every person convicted of a libel must be the contriver, procurer, or publisher.

The punishment for a libel, if the defendant is convicted on an indictment or information, is by fine and corporal punishment, at the discretion of the court; and when a person is brought up to receive judgment for a libel, his conduct, subsequent to his conviction, may be taken into consideration either by way of aggravation, or mitigation of the punishment.

These are the chief offences for which the law of England has provided in the way of prevention or punishment. It remains only to give some account of various circumstances incident to the condition, the trial, and the sentence of malefactors.

ARRESTS. All persons without distinction are equally liable to arrest in all criminal cases; but no man is to be arrested, unless charged with such a crime, as will at least justify holding him to bail, when taken. In general, an arrest may be made four ways: 1. By warrant. 2. By an officer without a warrant. 3. By a private person also without a warrant. 4. By hue and cry.

A *warrant* may be granted in extraordinary cases by the privy council, or secretaries of state; but ordinarily by justices of the peace; their power extends undoubtedly to all treasons, felonies, and breaches of the peace; and also to all such offences as they have power to punish by statute. The warrant ought to be under the hand and seal of the justice, should set forth the time and place of making, and the cause for which it is made, and should be directed to the constable, or other peace officer, (or, it may be to any private person by name,) requiring him to bring the party either generally before *any* justice of the peace for the county, or only before the justice who granted it; the warrant in the latter case being called a *special* warrant. A *general* warrant to apprehend all persons suspected, without naming or particularly describing any one in particular, is illegal and void for its uncertainty; and a warrant to apprehend all persons guilty of a crime therein specified, is no legal warrant. A warrant from the chief or other justice of the court of king's bench extends all over the kingdom: and is *tested* or dated
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England, not in any particular county. But the warrant of a justice of the peace in one county must be *backed*, that is, signed by a justice of the peace in another, before it can be executed there. And by 13 Geo. III. c. 31. any warrant for apprehending an English offender, who may have escaped into Scotland, and *vice versa*, may be indented and executed by the local magistrates, and the offender conveyed back to that part of the united kingdoms, in which such offence was committed.

Arrests by *officers, without warrant*, may be executed : 1. By a justice of the peace ; who may himself apprehend, or cause to be apprehended, by word only, any person committing a felony or breach of the peace in his presence. 2. The sheriff ; and, 3. The coroner, may apprehend any felon within the county without warrant. 4. The constable may without warrant arrest any one for a breach of the peace. And, in case of felony actually committed, or a dangerous wounding, whereby felony is like to ensue, he may upon probable suspicion arrest the felon ; and for that purpose, is authorized (as upon a justice's warrant) to break open doors, and even to kill the felon if he cannot otherwise be taken ; and, if he or his assistants be killed in attempting such arrests, it is murder in all concerned. 5. Watchmen, either those appointed by the statute of Winchester, 13 Edw. I. c. 4. to keep watch and ward in all towns, from sunsetting to sunrise, or such as are mere assistants to the constable, may *virtute officii* arrest all offenders, and particularly night-walkers, and commit them to custody until the morning.

Any private person (and *a fortiori* a peace officer) that is present when any felony is committed, is bound by the law to arrest the felon, on pain of fine and imprisonment, if he escapes through the negligence of the standers by ; and they may justify breaking open doors upon following such felons ; and if they *kill him*, provided he cannot otherwise be taken, it is justifiable ; though, if *they are killed* in endeavouring to make such arrest, it is murder. Upon probable suspicion also, a private person may arrest the felon, or other person suspected ; but he cannot justify breaking open doors to do it ; and if either party kill the other in the attempt, it is manslaughter, and no more.

The hue and cry has already been mentioned.

COMMITMENT. The justice, before whom a prisoner is brought, is bound immediately to examine the circumstances of the crime alleged, and to take in writing the examination of the prisoner, and the information of those who bring him.

If

If upon this inquiry it manifestly appears, either that such crime was committed, or that the suspicion entertained of the person was wholly groundless, it is lawful totally to discharge him; otherwise he must either be committed to prison or give bail.

BAIL. Bail, in a criminal as in a civil case, signifies sureties for the defendant's appearance to answer the charge against him. To refuse or delay to bail any person bailable, is an offence against the liberty of the subject, in any magistrate by the common law, as well as by the statute of Westm. 3 Edw. I. c. 15. and the *habeas corpus* act, 31 Chas. II. c. 2.; and lest the intention of the law should be frustrated by the justices requiring bail to a greater amount than the nature of the case demands, it is expressly declared by statute 1 W. and M. st. 2. c. 1. that excessive bail ought not to be required; though what bail shall be called excessive must be left to the courts, on considering the circumstances of the case, to determine. On the other hand, if the magistrate takes insufficient bail, he is liable to be fined, if the criminal does not appear. Bail may be taken either in court, or in some particular cases by the sheriff, coroner, or other magistrate; but most usually by the justices of the peace. Regularly in all offences either against the common law or act of parliament, that are below felony, the offender ought to be admitted to bail, unless it be prohibited by some act of parliament. The prohibition to accept of bail or mainprize is inserted in several statutes where imprisonment is intended as a positive punishment for crimes, not as a cautionary measure to prevent escape, or as an alternative to countervail some fine or penalty which the person convicted is liable or unwilling to pay.

HINDERING ARRESTS. It is an high offence to oppose one who lawfully endeavours to arrest another for treason or felony; some have said that the person who so opposes an arrest for treason, whereon he knows the party to have been guilty, is thereby guilty of the treason; and that he who so opposes an arrest for felony, is an accessory to the felony; but, if a person, knowing another to have been guilty of such a crime, barely receive him, and permit him to escape, without giving him any manner of advice, assistance or encouragement in it, as by directing how to do it in the safest manner, or furnishing him with money, provisions, or other necessaries, he is guilty of a high misdemeanor only, but no capital offence. The party himself who flies from such an arrest, is not thereby guilty of a capital offence, but only liable to forfeit his goods, when such flight is found against him by the jury on his trial.

BREAKING

BREAKING PRISON. Breach of prison by the offender himself, when committed for any cause, was felony at the common law; or even conspiring to break it; but this severity is mitigated by the statute *de frangentibus prisonam*, 1 Edw. II. which enacts, that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence; so that to break prison and escape, when lawfully committed for any treason or felony, remains still felony at the common law; and to break prison, (whether it be the county jail, the stocks, or other usual place of security,) when lawfully confined upon any other inferior charge, is still punishable as a misdemeanor by fine and imprisonment.

ESCAPE. As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself by any artifice, before he is delivered by the course of law, is guilty of a high contempt, punishable with fine and imprisonment. To constitute an escape, there must be an actual arrest; and therefore if an officer having a warrant to arrest a man, sees him shut up in a house, and challenges him as his prisoner, but never actually has him in his custody, and the party gets free, the officer cannot be charged with an escape; arrest must also be justifiable; for a criminal matter; and its continuance at the time of the escape grounded on that satisfaction which the public justice demands for such crime. It is an escape, in some cases, to suffer a prisoner to have greater liberty than by the law he ought to have; as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody; or to permit a prisoner to go out of the limits of a prison. Wherever an officer, who has the custody of a prisoner, charged with, and guilty of, a capital offence, knowingly gives him his liberty with an intent to save him either from his trial or execution, he is guilty of a voluntary escape, and involved in the guilt of the same crime with which the prisoner stood charged. An officer making a fresh pursuit after a prisoner, who has escaped through his negligence, may retake him at any time whether in the same or in a different county. Negligent escapes are punished by fine, and, if frequent, by loss of office.

Nor is the offence of permitting an escape limited to officers; for wherever any person has another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape if he suffer him to go at large, before he has discharged himself of him by delivering him over to some other

other who by law ought to have the custody of him; and therefore, if a private person arrests another for suspicion of felonys, and deliver him into the custody of another private person, who receives and suffers him to go at large, it is said that both are guilty of an escape; the first, because he should not have parted with him till he had delivered him into the hands of a public officer; the latter, because, having charged himself with the custody of a prisoner, he ought at his peril to have taken care of him. If the escape were voluntary, he is punishable in the same manner as an officer; and if negligent, he is punishable by fine and imprisonment.

RESCUE. Rescue, or as it is spelt in law books, *Rescous*, is the forcibly and knowingly freeing another from an arrest or imprisonment, and it is generally the same offence in the stranger rescuing, as it would have been in a jailor to have voluntarily permitted an escape. A rescue therefore of one apprehended for felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor also. In these cases, as in voluntary escapes, the principals must first be attainted or receive judgment before the rescuer can be punished: and for the same reason; because perhaps in fact it may turn out that there has been no offence committed. By 11 Geo. II. c. 26. and 22 Geo. II. c. 40. if five or more persons assemble to rescue any retailers of spirituous liquors, or to assault the informers against them, it is felony, and subject to transportation for seven years. By 16 Geo. II. c. 31. to convey to any prisoner in custody for treason or felony, any arms, instruments of escape, or disguise, without the knowledge of the jailor, though no escape be attempted, or any way to assist such prisoner to attempt an escape, though no escape be actually made, is felony, and subjects the offender to transportation for seven years; or if the prisoner be in custody for petit larceny, or other inferior offence, or charged with a debt of 100*l.* it is then a misdemeanor, punishable with fine and imprisonment; and by several special statutes, to rescue, or attempt to rescue, any person committed for the offences enumerated in those acts, is felony without benefit of clergy.

DURESS BY JAILORS. The considerate attention of the law toward those who are confined for debt has already been noticed; and it is also to be observed that prisoners in criminal cases, whether merely detained for safe custody, or for punishment after trial, are also protected by the humanity of the law. To prevent abuses by the extensive power which is necessarily reposed in jailors, it is enacted by 14 Edw. III. c. 10. that if any keeper of a prison, or under-keeper, by too great dures of imprisonment, and by pain, make any prisoner become an
appellor

appellor against his will, he is guilty of felony. And it is said to be no way material, whether the approvement is true or false, or whether the appellee be acquitted or condemned; but at common law this offence was esteemed a misprison only, unless the appellee were hanged by reason of the appeal. It has been determined that jailors, as well *de facto* as *de jure*, are liable to attachment for contempt of court, and to fine, imprisonment, and forfeiture of office for gross and palpable abuses; as in treating criminals with barbarity, extorting money, not making lawful deliverance, or suffering them to escape; and that if death ensues from their harsh treatment, it is felonious homicide. By 31 Chas. II. c. 2. if any person shall be committed to any prison, for any criminal offence, he shall not be removed unless by *habeas corpus*, or other legal writ: or where he is removed from one prison or place to another, within the same county, in order to his trial or discharge; or in case of sudden fire or infection, or other necessity; on pain that the person signing any warrant for such removal, and the person executing it, shall forfeit for the first offence 100*l.* and for the second 200*l.* to the party grieved. By 22 and 23 Chas. II. c. 20. the jailor shall not put, keep, or lodge prisoners for debt and felons together in one room or chamber; but they shall be kept and lodged separate and apart from one another in distinct rooms, on pain of forfeiting his office, and treble damages to the party grieved; and by 31 Geo. III. c. 46. as long as any person under sentence of transportation shall continue in the common jail, the jailor shall separate him, as far as conveniently may be, from every person in his custody, except prisoners convicted of felony. It is usual for the jailor to hamper a felon with irons to prevent his escape; and it is said that he is not punishable for keeping even a debtor in irons; but this can only be intended, where the officer has just reason to fear an escape; as where the prisoner is unruly, or makes any attempt to that purpose.

It is not intended here to enter into an account of all the forms used in bringing prisoners to trial; as the indictment, and subsequent proceedings; but merely to notice some peculiarities, which are of a less technical description.

APPROVER. A man is properly an approver, when being indicted of treason or felony, before competent judges, and in prison for the same, and capable of being an approver, he confesses the indictment, and is sworn to reveal all the treasons and felonies he knows, and then, before a coroner, enters his appeal against all who are partners with him in the crime in the indictment, being at the time of the appeal within the realm. The party thus appealed or accused, is called the

the *appellee*; the accuser is called in Latin, *probator*, in English, *prover* or *approver*. The exceptions which the appellee was entitled to take against the approver were very numerous, and the forms to be observed very strict; and it was purely in the discretion of the court to permit the appeal, or not. The admission of approvements has been long disused; for more mischief arose to good men by the false and malicious accusations of desperate villains, than benefit to the public by the discovery and conviction of real offenders. All the good that can be expected from this method of approvement is fully provided for in cases of coining, robbery, burglary, house-breaking, and larceny to the value of five shillings from shops, warehouses, stables and coach-houses, by various statutes, which enact, that if any such offender, being out of prison, shall discover two or more persons, who have committed the like offences, so as they may be convicted, he shall in case of burglary or housebreaking receive a reward of 40*l.* and in general be entitled to a pardon of all capital offences, except murder, and except all treasons, but coining. And if any such person, having feloniously stolen any lead, iron, or other metals, shall discover and convict two offenders of having illegally bought or received the same, he shall by virtue of the 29 Geo. II. c. 30. be pardoned for all such felonies committed before such discovery.

It has also been usual for the justices of the peace, by whom any persons charged with felony are committed to jail, to admit some one of their accomplices to become a witness (or, as it is generally termed, *king's evidence*) against his fellows; upon an implied confidence, which the judges of jail delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and of all other felonies to which he is examined by the magistrate; and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted for that or any other previous offence of the same degree. In the case of *Mrs. Rudd*, in which this subject is clearly and ably explained by lord Mansfield, and again by Mr. Justice Aston, in delivering the opinion of all the judges, it is laid down that no authority is given to a justice of the peace to pardon an offender, and to tell him he shall be a witness at all events against others; but where the evidence appears insufficient to convict two or more without the testimony of one of them, the magistrate may encourage a hope, that he who will behave fairly and disclose the whole truth, and bring the others to justice, shall himself escape punishment. This discretionary power exercised by the justices
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of peace is founded in practice only, and cannot controul the authority of the court of general jail delivery, and exempt, at all events, the accomplice from being prosecuted. A motion is always made to the judge for leave to admit an accomplice to be a witness; and unless he should see some particular reason for a contrary conduct, he will prefer the one to whom this encouragement has been given by the justice of peace. This admission to be a witness amounts to a promise of a recommendation to mercy, upon condition that the accomplice makes a full and fair disclosure of all the circumstances of the crime for which the other prisoners are tried, and in which he has been concerned in concert with them. Upon failure of his part of the condition, he forfeits all claim to protection; as upon a trial at York, before Mr. Justice Buller, where the accomplice who was admitted a witness, denied in his evidence all that he had before confessed, upon which the prisoner was acquitted; but the judge ordered an indictment to be preferred against this accomplice for the same crime, and upon his previous confession and other circumstances, he was convicted and executed.

On the arraignment of a prisoner, two incidents are worthy of notice; his standing mute, and his confessing the indictment.

MUTE. Regularly a prisoner is said to stand mute, when, being arraigned for treason or felony, he either, 1. Makes no answer at all; or, 2. Answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise; or, 3. Upon having pleaded not guilty, refuses to put himself upon the country. If he says nothing, the court ought, *ex officio*, to impanel a jury to inquire whether he stands obstinately mute, or whether he is dumb by the visitation of God? If the latter appears to be the case, the judges (who are to be of counsel for the prisoner, and to see that he has law and justice) shall proceed to the trial, and examine all points as if he had pleaded not guilty; but whether judgment of death can be given against such a prisoner, who has never pleaded, and can say nothing in arrest of judgment, is a point yet undetermined. If he is found to be obstinately mute, (which a prisoner has been held to be that has cut out his own tongue,) then if it be on an indictment of high treason, it is equivalent to a conviction, and he receives the same judgment and execution. And as in this, the highest crime, so also in the lowest species of felony, viz. in petit larceny, and in all misdemeanors, standing mute has always been equivalent to conviction; but upon appeals, or indictments for other felonies, or petit treason, the prisoner was not, by the ancient law, looked upon as convicted, so as to receive judgment for the felony; but should, for his obstinacy,

obstinacy, have received the terrible sentence of *penance*, or *peine forte et dure*. Before this was pronounced, the prisoner had not only three admonitions, but also a respite of a few hours, and the sentence was distinctly read to him, that he might know his danger: and, after all, if he continued obstinate, and his offence was clergyable, he had the benefit of his clergy allowed him, even though he was too stubborn to pray it; but if the prisoner charged with a capital felony, continued stubbornly mute, the judgment was then given against him, without any distinction of sex or degree. The penance was, that the prisoner be remanded to the prison whence he came, and put into a low, dark chamber; and there be laid on his back, on the bare floor, naked, unless where decency forbids, that there be placed upon his body as great a weight of iron as he could bear, and more; that he have no sustenance, save only, on the first day, three morsels of the worst bread; and, on the second day, three draughts of standing water, that should be nearest to the prison door; and in this situation this should alternately be his daily diet, till he died, or (as anciently the judgment ran) till he answered. The chief end of this penance was to obtain escheats and forfeitures; for the law was, that by standing mute, the judgment, and of course the corruption of the blood and escheat of the lands, were saved in felony and petit treason; though not the forfeiture of the goods. In high treason, as standing mute is equivalent to a conviction, the same judgment, the same corruption of blood, and the same forfeitures always attended it, as in other cases of conviction. Lately, to the honour of our laws, it is enacted by stat. 12 Geo. III. c. 20. that every person who, being arraigned for felony or piracy, shall stand mute, or not answer directly to the offence, shall be convicted of the same, and the same judgment and execution, with all their consequences in every respect, shall be thereupon awarded, as if the person had been convicted by verdict or confession of the crime.

CONFESSION. Confession is either express or implied. An express confession is where a person directly acknowledges the crime, with which he is charged; it may be received after the plea of "not guilty" recorded, notwithstanding the repugnancy. Where a person upon his arraignment actually confesses himself guilty, or unadvisedly discloses the special manner of the fact, on a supposition that it does not amount to felony, when in fact it does, yet the judges, upon probable circumstances that such confession may proceed from fear, menace, or duress, or from weakness or ignorance, may refuse to record it, and suffer the party to plead not guilty.

An implied confession is where a defendant, in a case not capital, does not directly own himself guilty, but in a manner admits it by yielding to the king's mercy; and desiring to submit to a small fine, in which case, if the court think fit to accept of such submission, and make an entry that the defendant threw himself on the king's grace, without putting him to a direct confession, or plea, the defendant is not estopped from pleading *not guilty* to an action of the same fact, as he is where the entry is that he confessed the indictment.

No confession whatever, before final judgment, deprives the defendant of the privilege of taking exceptions in arrest of judgment to faults apparent in the record; for the judges must *ex officio* take notice of all such faults; and any one, as *amicus curiæ*, may inform them of them.

The course of trial by jury has already been described, but it may be proper to notice some other modes anciently resorted to, and still often mentioned, though now utterly disused.

ORDEAL. The trial of ordeal is of the highest antiquity; it was peculiarly distinguished by the appellation of *judicium dei*; and sometimes *vulgaris purgatio*, to distinguish it from the canonical purgation. It was of two sorts, either *fire-ordeal*, or *water-ordeal*; the former being confined to persons of higher rank, the latter to the common people. Both these might be performed by deputy; but the principal was to answer for the success of the trial; the deputy only venturing some corporal pain, for hire, or perhaps for friendship. *Fire-ordeal* was performed either by taking up in the hand, unhurt, a piece of red hot iron, of one, two, or three pounds weight, or else by walking barefoot, and blindfold, over nine red-hot plough-shares, laid lengthwise at unequal distances: and if the party escaped being hurt, he was adjudged innocent: but if it happened otherwise, as without collusion it usually did, he was then condemned as guilty. *Water-ordeal* was performed, either by plunging the bare arm up to the elbow in boiling water, and escaping unhurt, or by casting the person suspected into a river or pond of cold water; and, if he floated without any action of swimming, it was deemed evidence of his guilt; but if he sunk, he was acquitted.

CORNSNED. Another species of purgation, probably sprung from a presumptuous abuse of revelation in the ages of dark superstition, was the *cornsned* or morsel of execration; being a piece of cheese or bread, of about an ounce in weight, which was consecrated with a form of exorcism; desiring of the Almighty that it might cause convulsions and paleness, and find no passage, if the man was really guilty; but might turn to health
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and nourishment, if he was innocent. This custom was then given to the suspected person, who at the same time also received the holy sacrament. This custom has long since been gradually abolished, though the remembrance of it still subsists in certain phrases of abjuration retained among the common people; as, "I will take the sacrament upon it;" or, "may this morsel be my last," and the like.

BATTEL. The trial by battel may be demanded at the election of the appellee, in either an appeal or an approvement; and it is carried on with equal solemnity as that on a writ of right: but with this difference, that there each party might hire a champion, but here they must fight in their proper persons. Therefore women, priests, and some others might counterplead and refuse the wager of battel. The form and manner of combat are much the same as upon a writ of right; only the oaths of the two combatants are vastly more striking and solemn. The appellee, when appealed of felony, pleads not guilty, and throws down his glove, and declares he will defend the same by his body: the appellant takes up the glove, and replies that he is ready to make good the appeal, body for body; thereupon the appellee, taking the book in his right hand, and in his left the right hand of his antagonist, swears to this effect: "Hear this, O man, whom I hold by the hand, who callest thyself John by the name of baptism, that I, who call myself Thomas by name of baptism, did not feloniously murder thy father, William by name, nor am any way guilty of the said felony. So help me God, and the saints; and this I will defend against thee, by my body, as this court shall award." To which the appellant replies, holding the bible and his antagonist's hand in the same manner; "Hear this, O man, whom I hold by the hand, who callest thyself Thomas by the name of baptism, that thou art perjured; and therefore perjured because that thou feloniously didst murder my father, William by name. So help me God, and the saints; and this I will prove against thee by my body, as this court shall award." The battel is then to be fought with the same weapons, *viz.* batons, the same solemnity, and the same oath against amulets and sorcery, that are used in the civil combat: and if the appellee be so far vanquished that he cannot or will not fight any longer, he shall be adjudged to be hanged immediately; and then, as well as if he be killed in battel, providence is deemed to have determined in favour of the truth, and his blood shall be attainted; but if he kills the appellant, or can maintain the fight from sunrise, till the stars appear in the evening, he shall be acquitted. So also if

the appellant becomes recreant, and pronounces the horrible word *craven*, he shall lose his *liberam legem*, and become infamous; and the appellee shall recover his damages, and also be for ever quit, not only of the appeal, but for all indictments likewise for the same offence.

COPY OF RECORD OF INDICTMENT. 'In cases where the prisoner or defendant is acquitted by a jury, the court sometimes grants him a copy of the record of his indictment and acquittal, as a foundation for a legal process against the prosecutor; but this is frequently denied where there is any the least probable cause to found such prosecution upon. But an action on the case for a malicious prosecution may be founded upon an indictment, whereon no acquittal can be had; as, if it be rejected by the grand jury, or be *coram non judice*, or be insufficiently drawn; for it is not the danger of the plaintiff, but the scandal, vexation, and expence, upon which his action is founded.

CLERGY. The *privilegium clericale*, or, in common speech, the *benefit of clergy*, had its origin from the pious regard paid by christian princes to the church in its infant state; and the ill use which the popish ecclesiastics soon made of that pious regard. The exemptions which they granted to the church were principally of two kinds: 1. Exemption of *places*, consecrated to religious duties, from criminal arrests, which was the foundation of sanctuaries. 2. Exemption of the *persons* of clergymen from criminal process before the secular judge in a few particular cases, which was the true original meaning of the *privilegium clericale*. Among their other encroachments the Romish clergy endeavoured to obtain a total exemption from the secular jurisdiction, but in this they failed; and although the ancient *privilegium clericale* was in some capital cases, yet it was not *universally* allowed. In those particular cases, the bishop or ordinary was used to demand his clerks to be remitted out of the king's courts, as soon as they were indicted: concerning the allowance of which demand there was for many years a great uncertainty; till at length it was finally settled in the reign of Henry VI. that the prisoner should first be arraigned; and might either then claim his benefit of clergy, by way of declinatory plea; or, after conviction, by way of arresting judgment. Originally the law was held, that no man should be admitted to the privilege of clergy, but such as had the clerical habit and tonsure; but in process of time, a much wider and more comprehensive criterion was established, every one that could read being held a clerk, and allowed the benefit of clerkship. Learning began to be more generally disseminated
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than formerly, it was found that as many laymen as divines were admitted to the privilege: and therefore by 4 Hen. VII. c. 13. a distinction was once more drawn between mere lay scholars and clerks that were really in orders; and, although it was thought reasonable still to mitigate the severity of the law with regard to the former, yet they were not put upon the same footing with actual clergy; for the statute directs, that no person once admitted to the benefit of clergy, shall be admitted thereto a second time, unless he produces his orders; and in order to distinguish their persons, all laymen who are allowed this privilege shall be burnt with a hot iron in the brawn of the left thumb. This distinction between learned laymen and real clerks in orders, was abolished for a time by the statutes 28 Hen. VIII. c. 1. and 32 Hen. VIII. c. 3. but is held to have been virtually restored by 1 Edw. VI. c. 12. which also enacts, that lords of parliament and peers of the realm, having place and voice in parliament, may have the benefit of their peerage equivalent to that of clergy, for the first offence, (although they cannot read, and without being burnt in the hand) for all offences then clergyable to commoners, and also for the crimes of house-breaking, high-way robbery, horse-stealing, and robbing of churches. After clergy had been allowed, it was usual for the ordinary to bring offenders to a new canonical trial, replete with absurdity and gross perjury; but this disgraceful supplementary trial was abolished by the 18 Eliz. c. 7. which directs, that after allowance of clergy and burning in the hand, the prisoner shall forthwith be enlarged, with proviso, that the judge may, if he thinks fit, continue the offender in jail, for any time not exceeding a year. And thus the law continued, for above a century, unaltered; except only that the 21 Jas. I. c. 6. allowed that women convicted of simple larcenies under the value of ten shillings should (not properly have the benefit of clergy, for they were not called upon to read, but) be burned in the hand, and whipped, set in the stocks, or imprisoned for any time not exceeding a year. And a similar indulgence, by the stats. 3 and 4 W. and M. c. 9. and 4. and 5 W. and M. c. 24. was extended to women guilty of any clergyable felony whatever; who were allowed to claim once the benefit of the statute, in the like manner as men might claim the benefit of clergy, and to be discharged upon being burned in the hand, and imprisoned any time not exceeding a year. The punishment of burning in the hand being found ineffectual, was also changed by 10 and 11 W. III. c. 23. into burning in the most visible part of the left cheek, nearest the nose; but, such an indelible stigma being found by experience to render offenders desperate, this provision was

pealed about seven years afterwards, by 5 Ann. c. 6. and, till that period, all women, all peers of parliament and peeresses, and all male commoners who could read were discharged in all clergyable felonies; the males absolutely; if clerks in orders; and other commoners, both male and female, upon branding; and peers and peeresses without branding; for the first offence; yet all liable (excepting peers and peeresses,) if the judge saw occasion. to imprisonment not exceeding a year. And those men who could not read, if under the degree of peerage, were hanged. Afterwards indeed it was considered, that education and learning were no extenuations of guilt, but quite the reverse: and that, if the punishment of death for simple felony was too severe for those who had been liberally instructed, it was, *a fortiori*, too severe for the ignorant also; and thereupon by the same statute 5 Ann. c. 6. it was enacted, that the benefit of clergy should be granted to all those who were intitled to ask it, without requiring them to read by way of conditional merit; but experience having shewn, that so universal a lenity was frequently inconvenient, and an encouragement to commit the lower degrees of felony; and that, although, capital punishments were too rigorous for these inferior offences, yet no punishment at all (or next to none) was as much too gentle; it was farther enacted by the same statute, that when any person is convicted of any theft or larceny, and burnt in the hand for the same, according to the ancient law, he shall also at the discretion of the judge be sentenced to the house of correction or public work-house, to hard labour in penitentiary houses, and in some cases to transportation. At this day the benefit of clergy is allowed to all clerks in orders, without branding, transportation, fine, or whipping, and this as often as they offend; but clergymen have no privilege in petty larcenies; they are liable to be whipped or transported like other persons, though they are subject to no corporal punishment on being convicted of a grand larceny, or any clergyable felony. All lords of parliament, and peers of the realm having place and voice in parliament, by the stat. 1 Edw. VI. c. 12. (which is likewise held to extend to peeresses,) shall be discharged in all clergyable and other felonies, provided for by the act, without any burning in the hand, or imprisonment, or other punishment; but this only for the first offence. Lastly, all the commons of the realm, not in orders, whether male or female, are for the first offence discharged of the capital punishment of felonies within the benefit of clergy, upon being burnt in the hand, whipped, or fined, or suffering a discretionary imprisonment in the common jail, the house of correction, one of the penitentiary houses, or in the places of labour for the benefit of

of some navigation ; or in cases of larceny, upon being transported for seven years, if the court shall think proper. A layman, who has once had the benefit of clergy, may be precluded from obtaining it a second time, by a counter plea on the part of the prosecution, averring the identity of the prisoner's person, and that he had before been allowed the benefit of his clergy, though the second crime be quite different from the first ; as, a person convicted of bigamy is liable to suffer death for a manslaughter, or any other clergyable felony. The benefit of clergy is not allowed either in high treason, petit larceny, or in any mere misdemeanors at common law ; and therefore it may be laid down for a rule, that it was allowable only in petit treason and capital felonies, which for the most part became legally intitled to this indulgence by the statute *de clerico*, 25 Edw. III. ft. 3. c. 4. But yet it was not allowed in all felonies whatsoever : for in some it was denied even in the common law, viz. *insidiatio viarum*, or lying in wait for one on the high-way ; *depopulatio agrorum*, or destroying and ravaging a country ; and *combustio domorum*, or arson ; all which are a kind of hostile acts, and in some degree border upon treason. And further, all these identical crimes, together with petit treason, and many other acts of felony, are ousted of clergy by particular acts of parliament, which have for the most part been mentioned. In general it may be observed, 1. That in all felonies, whether new created or by common law, clergy is now allowable, unless taken away by express words of an act of parliament. 2. That where clergy is taken away from the principal, it is not of course taken away from the accessory, unless he be also particularly included in the words of the statute. 3. That, when the benefit of clergy is taken away from the *offence*, (as in case of murder, robbery, and burglary,) a principal in the second degree, being present, aiding and abetting the crime, is excluded from his clergy ; but 4. That, where it is only taken away from the *person committing* the offence, (as in the case of stabbing, or committing larceny in a dwelling-house, or privately from the person,) his aiders and abettors are not excluded. The consequences to the party of allowing him his clergy, exclusive of branding him, &c. are, 1. That by his conviction he forfeits all his goods to the king, which, being once vested in the crown, shall not afterwards be restored to the offender. 2. That after conviction, and till he receives the judgment of the law, by branding, or some of its substitutes, or else is pardoned by the king, he is, to all intents and purposes, a felon, and subject to all the disabilities and incidents of a felon, 3. That after burning or its substitute, or pardon, he is discharged for ever of that, and all other felonies before committed

ted within the benefit of clergy; but not of felonies of which such benefit is excluded, and this by stats. 8 Eliz. c. 4., and 18 Eliz. c. 7. 4. That by the burning or its substitute, or the pardon of it, he is restored to all capacities and credits, and the possession of his lands, as if he had never been convicted. 5. That what is said with regard to the advantages of commoners and laymen, subsequent to the burning in the hand, is equally applicable to all peers and clergymen, although never branded at all, or subjected to other punishment in its stead. For they have the same privileges, without any burning, or other substitute for it, which others are intitled to after it.

IMPRISONMENT. The ordinary incidents attending imprisonments have been mentioned; when it is inflicted by way of punishment, the county jail is not always the place selected; but houses of correction, work-houses, or penitentiary houses are frequently chosen. In forming the plan of these penitentiary houses, the principal objects have been, by sobriety, cleanliness, and medical assistance, by a regular series of labour, by solitary confinement during the intervals of work, and by religious instruction, to preserve and amend the health of the unhappy offenders, to inure them to habits of industry, to guard them from pernicious company, to accustom them to serious reflection, and to teach them both the principles and practice of every christian and moral duty.

BURNING IN THE HAND AND WHIPPING. By the 19 Geo. III. c. 74. instead of burning in the hand, which was sometimes too slight, and sometimes too disgraceful a punishment, the court in all clergyable felonies may impose a pecuniary fine, or, except in the case of manslaughter, may order the offender to be once or oftener, but not more than thrice, either publicly or privately whipped; such private whipping, to prevent collusion or abuse, to be inflicted in the presence of two witnesses; and in the case of female offenders, in the presence of females only. Which fine or whipping shall have the same consequences as burning in the hand; and the offender shall be equally liable to a subsequent detainer or imprisonment.

FINES. Fines and the term of imprisonment are often discretionary; for, whatever may be urged in favour of certain and equal punishments, it must be evident that equality in these respects would be the greatest injustice; as some men would pay a fixed fine with contempt, and others would wreak their malice in defiance of an imprisonment, of which they knew the definite end. Courts are however prevented from inflicting excessive fines both by Magna Charta and the Bill of Rights.

PILLORY. For some offences the punishment is to stand for a given time in and upon the pillory. This punishment was formerly

formerly attended with mutilations, as flitting the nose, nailing down the ears, and burning with hot irons, but in the more mild administration of justice in modern days, such disgusting aggravations of pain are unheard of. The pillory is considered as merely an exhibition of an offender, for the purpose of rendering him notorious, and all means of giving him unnecessary pain, or exciting popular indignation, are cautiously avoided. This lenity in the execution of sentence has contributed to humanize the people. They were used formerly to consider the pillory as intended to inflict every corporeal pain, short of death; and shewed their readiness to co-operate in the spirit of the law, by pelting the criminal with missiles of every kind, so that some have actually lost their lives by this lawless and misjudging violence. In later times, there are few instances of persons in the pillory being assaulted by the mob, and then only in cases of the most odious crimes; such indeed as reduce the considerate and humane to the necessity of deploring the violence of the people, without being able to commiserate the sufferers.

STOCKS. Another place of exposure, which is resorted to without conviction before a court, for the punishment of riotous, drunken, and disorderly persons, common beggars and vagrants, is the stocks, of which there is generally a pair in every parish. In these the beadle or constable, by order of a magistrate, places small offenders, their ankles being received into holes made in boards placed for the purpose, and the offender sitting there for the time prescribed. Near to, or united with the stocks, there is also a whipping post, for the castigation of those whom, on a summary conviction for certain minor offences, a justice is empowered so to punish.

DUCKING STOOL. Formerly, but not now-a-days, there was in every parish, near a pond, an engine of correction called the trebucket, castigatory, or *cucking* stool, which in the Saxon language is said to signify the scolding stool, for the punishment of common scolds, who after conviction on indictment, might be sentenced to it. The name is frequently corrupted into *ducking* stool, because the residue of the judgment is, that she who is so placed therein is plunged in the water for her punishment.

TRANSPORTATION AND THE GALEES. From these inferior punishments, those of a more solemn and affecting nature come next to be considered. Transportation or exile is a sentence unknown to the common law of England; and where it is now inflicted, it is either by the choice of the criminal himself, in order to escape capital punishment, or it is imposed by the express direction of some act of parliament; for no power on earth, except the authority of parliament, can

send a subject of England, not even a criminal, out of the land against his will. The first introduction of it into our laws was in the reign of Elizabeth; but it seems to have taken place more nearly as now practised, about the time of the restoration; and after the establishment of English colonies in America, it became in this country, as in all others which have had colonies, the most common sentence of criminals. Several acts of parliament vested in the king the power of transporting to America persons convicted of divers offences, and of dispensing with their transportation and allowing them to return, at his pleasure, which amounted to a pardon. But when America became independent, acts of the 19 Geo. III. c. 74. and 24 Geo. III. sess. 2. c. 56. empowered the courts, when any person should be convicted of grand or petit larceny, or any other crime for which he should be liable by law to be transported to America, to order him to be transported to any parts beyond the seas, or elsewhere, in like manner and for the same term of years for which such person was liable to be transported to America.

By these acts too, penitentiary houses, as already mentioned, were established; and it was enacted, that where any *male person* shall be lawfully convicted of grand larceny, or any other crime, except petty larceny, for which he shall be liable to be transported to any parts beyond the seas for seven years, the court may instead, order that such person, appearing to be of competent age, and free from any bodily infirmity, shall be punished by being kept on board ships, or vessels properly accommodated for security, employment, and health; and by being employed in hard labour, in the raising sand, soil, and gravel from, and cleansing the river Thames, or any other navigable river, or any port, harbour, or haven, in England, such river, port, harbour, or haven, being previously approved and appointed for that purpose by an order of privy council; or in any other service for the benefit of the navigation of the said rivers, ports, harbours, or havens, or in any other public works, upon the banks or shores of the same, under the management and direction of such superintendant as shall be appointed for the Thames by the justices of Middlesex, and for other rivers, &c. by the justices of the county where they are situated, or of such counties adjoining the same as the court shall direct at their quarter session, for such term not less than one year, nor exceeding five years; or in case such offender shall be liable to be transported for fourteen years, not exceeding seven years, as the court shall think fit.

Still these regulations were insufficient to answer the required purposes, until the 27 Geo. III. c. 2. which recited, that
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his majesty, by two several orders in council, had judged fit to declare and appoint the place to which certain offenders should be transported for the time or terms of their several sentences to be the eastern coast of New South Wales, or some one or other of the islands adjacent, and provided means for carrying those orders into effect.

In all cases of transportation, or sentence to the hulks, the party returning before his term is expired, or escaping from the hulks, and being at large, is guilty of felony, and suffers death without benefit of clergy.

ATTAINDER. When sentence of death is pronounced, the immediate inseparable consequence by the common law is attainder. He is no longer of any credit or reputation; he cannot be a witness in any court; neither is he capable of performing the functions of another man: for, by an anticipation of his punishment, he is already dead in law. This is after judgment: for there is a great difference between a man *committed* and *attainted*; though they are frequently, through inaccuracy, confounded together. After conviction only a man is liable to none of these disabilities; but when judgment is once pronounced, both law and fact conspire to prove him completely guilty.

The consequences of attainder are forfeiture and corruption of blood.

FORFEITURE. Forfeiture is twofold; of real, and personal estates. First, as to real estates: by attainder in high treason, a man forfeits to the king all his lands and tenements of inheritance, whether fee-simple, or fee-tail, and all his rights of entry on lands and tenements, which he had at the time of the offence committed, or at any time afterwards, to be forever vested in the crown: and also the profits of all lands and tenements, which he had in his own right for life or years, so long as such interest shall subsist. This forfeiture relates back to the time of the treason committed: so as to avoid all intermediate sales and incumbrances, but not those before the fact: and therefore a wife's jointure is not forfeitable for the treason of her husband; because settled upon her before the treason committed; but her dower is forfeited by the express provision of the 5 and 6 Edw. VI. c. 11: and yet the husband shall be tenant by the courtesy of the wife's lands, if the wife be attainted of treason: for that is not prohibited by the statute. But although, after attainder, the forfeiture relates back to the time of the treason committed, yet it does not take effect unless the attainder be had; of which it is one of the fruits: and therefore if a traitor dies before judgment pronounced; or is killed in open rebellion, or is hanged by martial law, it
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works no forfeiture of his lands : for he never was attainted of treason. But if the chief justice of the king's bench (the supreme coroner of all England) in person, upon view of the body of one killed in open rebellion, records it, and returns the record into his own court, both lands and goods shall be forfeited. At the time of the union, the crime of treason in Scotland was, by the Scots law, in many respects different from that of treason in England ; and particularly in its consequences of forfeiture of intailed estates, which was more peculiarly English ; yet it seemed necessary that a crime so nearly affecting government should, both in its essence and consequences, be put upon the same footing in both parts of the united kingdom. In new modelling these laws, the Scotch nation and the English house of commons struggled hard, partly to maintain, and partly to acquire a total immunity from forfeiture and corruption of blood : which the house of lords as firmly resisted. At length a compromise was agreed to, which is established by this statute, *viz.* that the same crimes, and no other, should be treason in Scotland than are so in England ; and that the English forfeitures and corruption of blood should take place in Scotland till the death of the then Pretender, and then cease throughout the whole of Great Britain : the lords artfully proposing this temporary clause, in hopes (it is said) that the prudence of succeeding parliaments would make it perpetual. This has partly been done by the statute 17 Geo. II. c. 39. the operation of these indemnifying clauses being thereby still farther suspended, till the death of the sons of the Pretender.

In petit treason and felony, the offender also forfeits all his chattel interests absolutely, and the profits of all estates of freehold during life ; and after his death, all his lands and tenements in fee simple (but not those in tail) to the crown, for a very short period of time : for the king shall have them for a year and a day, and may commit therein what waste he pleases ; which is called the king's *year, day, and waste*. Formerly the king had only a liberty of committing waste on the lands of felons, by pulling down their houses, ~~extirpating~~ their gardens, ploughing their meadows, and cutting down their woods ; but this tending greatly to the prejudice of the public, it was agreed in the reign of Henry I. in this kingdom, that the king should have the profits of the land for one year and a day, in lieu of the destruction he was otherwise at liberty to commit ; and therefore *magna charta* provides that the king shall only hold such lands for a year and a day, and then restore them to the lord of the fee ; without any mention made of waste. But the stat. 17 Edw. II. *de prerogativo regis*, seems to

to suppose, that the king shall have his year, day, and waste : and not the year and day *instead of* waste. Which Sir Edward Coke (and the author of a mirror before him) very justly look upon as an incroachment, though a very ancient one, of the royal prerogative. This year, day, and waste, are now usually compounded for ; but otherwise they regularly belong to the crown ; and, after their expiration, the land would naturally descend to the heir, (as in gavel kind tenure it still does) did not its feudal quality intercept such descent, and give it, by way of escheat, to the lord. These forfeitures for felony do also arise only upon attainder ; and therefore a *felon de se* forfeits no lands of inheritance or freehold, for he never is attained as a felon. They likewise relate back to the time of the offence committed, as well as forfeitures for treason ; so as to avoid all intermediate charges and conveyances.

The forfeiture of goods and chattels accrues in every one of the higher kinds of offence : in high treason or misprision thereof, petit treason, felonies of all sorts whether clergyable or not, self-murder or felony *de se*, petit larceny or standing mute, and the offences of striking, &c. in Westminster-Hall.

For *flight* also, on an accusation of treason, felony, or even petit larceny, whether the party be found guilty or acquitted, if the jury find the flight, the party shall forfeit his goods and chattels ; for the very flight is an offence, carrying with it a strong presumption of guilt, and is at least an endeavour to elude justice : but the jury very seldom find the flight ; forfeiture being looked upon, since the vast increase of personal property, as too large a penalty for an offence, to which a man is prompted by the desire of self-preservation.

There are some remarkable differences between the forfeiture of lands, and of goods and chattels.

1. Lands are forfeited upon attainder, and not before : goods and chattels are forfeited by conviction.

2. In outlawries for treason or felony, lands are forfeited only by the judgment : but the goods and chattels are forfeited by a man's being first put in the *exigent*, without staying till *habeas quinto exactus*, or finally outlawed ; for the secreting himself so long from justice is construed a flight in law.

3. The forfeiture of lands has relation to the time of the fact committed, so as to avoid all subsequent sales and incumbrances : but the forfeiture of goods and chattels has no relation backwards ; so that those only which a man has at the time of conviction shall be forfeited. Therefore a traitor or felon may *bona fide* sell any of his chattels real or personal, for the sustenance of himself and family, between the fact and conviction : for personal property is of so fluctuating a nature, that it passes through many hands in a short time ; and no buyer could

could be safe, if he were to return the goods which he had fairly bought, provided any of the prior vendors had committed a treason or felony. Yet if they be collusively and not *bona fide* parted with, merely to defraud the crown, the law (and particularly the stat. 13 Eliz. c. 5.) will reach them; for they are all the while truly and substantially the goods of the offender; and as he, if acquitted, might recover them himself, as not parted with for a good consideration; so in case he happens to be convicted, the law will recover them for the king.

CORRUPTION OF BLOOD. Corruption of Blood extends both upwards and downwards; so that an attainted person can neither inherit lands or other hereditaments from his ancestors, nor retain those he is already in possession of, nor transmit them by descent to any heir; but they escheat the lord of the fee, subject to the king's superior right of forfeiture: and the person attainted also obstructs all descents to his posterity, wherever they are obliged to derive a title through him to a remoter ancestor.

EXECUTION. The judgments on various offences have already been mentioned in treating of them. When a peer is convicted of high treason the sentence on him is the same as on commoners, but it is usual for the king to remit all parts of it except *beheading*. The judgment of death against a man or woman for felony has always been the same since the reign of Henry I. viz. that he or she be hanged by the neck till dead; which in the roll is shortly entered thus, "*suf. per coll.*" for *suspendatur per collum*, let him be hanged by the neck. It may afford matter of speculation, Blackstone observes, that in civil causes there should be such a variety of writs of execution to recover a trifling debt, issued in the king's name, and under the seal of the court, without which the sheriff cannot legally stir one step; and yet that the execution of a man, the most important and terrible task of any, should depend upon a marginal note. Upon this point Mr. Christian gives the following judicious and satisfactory explanation: Though it be true that a marginal note in a calendar, signed by the judge, is the *only* warrant that the sheriff has for the execution of a convict, yet it is made with more caution and solemnity than is represented by the learned commentator. At the end of the assizes, the clerk of assize makes out in writing four lists of all the prisoners, with separate columns, containing their crimes, verdicts, and sentences, leaving a blank column, which the judge fills up opposite the names of the capital convicts by writing, *to be executed, respited, or reprieved*. These four calendars, being first carefully compared together by the judge and the clerk of the assize, are signed by them, and one is given to the sheriff, one to

to the jailor; and the judge and the clerk of the assize each keep another. If the sheriff receives afterwards no special order from the judge, he executes the judgment of the law in the usual manner, agreeably to the directions of his calendar.

Execution ought not to be awarded into a different county from that wherein the party was tried and convicted, except only where a record of attainder is removed into the court of king's-bench, which may award the execution in the same county wherein it sits; and where the prisoner is in the custody of the marshal of the king's-bench, the usual place of execution is at Saint Thomas at Waterings, in the county of Surry. In all cases, as well capital as otherwise, execution must be performed by the sheriff or his deputy; whose warrant for so doing was anciently by precept under the hand and seal of the judge, as it is still practised in the court of the lord high steward upon the execution of a peer, though in the court of the peers in parliament it is done by writ from the king. Afterwards it was established that in case of life the judge may command execution to be done without any writ. In London, the Recorder, after reporting to the king in person, the case of the several prisoners, and receiving his royal pleasure that the law must take its course, issues his warrant to the sheriffs, directing them to do execution at the day and place assigned. If a man condemned come to life after he has been hanged, he ought to be hanged again; for the judgment is not executed till he is dead.

REPRIVE. A reprieve, from *reprendre*, to take back, is the withdrawing of a sentence for an interval of time, whereby the execution is suspended. Every court which has power to award an execution, has also of common right a discretionary power of granting a reprieve; as where a person pleads a pardon defective in point of form, but sufficiently shewing the king's intention of mercy; or where it is doubtful whether the offence be not included in a general statute pardon; or whether, as it is laid in the indictment, it amounts to so high a crime as that with which the prisoner was charged. Judges continue to have this power after their commission is determined; and by the 8 Geo. III. c. 15. a power is given to judges of assize to reprieve a prisoner for the purpose of obtaining a conditional pardon.

There are reprieves independently of grace, which arise from the necessity of law. If a woman quick with child is condemned either for treason or felony, she may allege her being with child in order to get the execution respited, and thereupon the sheriff or marshal is commanded to take her into a private room, and to impanel a jury of matrons, to

try and examine whether she is quick with child or not; and if they find her quick with child, the execution is respited till her delivery; but this respite cannot be demanded more than once.

Another cause of regular reprieve is, if the offender become *non compos*, between the judgment and the award of execution: for regularly, though a man be *compos* when he commits a capital crime, yet if he becomes *non compos* after, he shall not be indicted; if after indictment, he shall not be convicted; if after conviction, he shall not receive judgment; if after judgment, he shall not be ordered for execution. The law in such case knows not but he might have offered some reason, if in his senses, to have stayed these respective proceedings. It is therefore an invariable rule, when any time intervenes between the attainer and the award of execution, to demand of the prisoner what he has to allege, why execution should not be awarded against him; and if he appears to be insane, the judge, in his discretion may, and ought, to reprieve him.

PARDON. The king may pardon all offences merely against the crown, or the public; excepting, that to preserve the liberty of the subject, the committing any man to prison out of the realm, by the *habeas corpus* act, 31 Chas. II. c. 2. made a *pre-munire*, unpardonable even by the king. Nor can the king pardon where private justice is principally concerned in the prosecution of offenders. Neither can he pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it, though afterwards he may remit the fine. Neither, lastly, can the king pardon an offence against a popular or penal statute, after information brought; for thereby the informer has acquired a private property in his part of the penalty. There is also a restriction of a peculiar nature, that affects the prerogative of pardoning, in case of parliamentary impeachments, viz. that the king's pardon cannot be *pleaded*, to any such impeachment, so as to impede the inquiry, and stop the prosecution of great and notorious offenders; but after the impeachment has been solemnly heard and determined, it is not understood that the king's royal grace is further restrained or abridged.

As to the *manner* of pardoning: First, it must be under the great seal. A warrant under the privy seal, or sign manual, though it may be a sufficient authority to admit the party to bail, in order to plead the king's pardon, when obtained in proper form, is not of itself a complete irrevocable pardon. Next, it is a general rule, that, wherever it may reasonably be presumed the king is deceived, the pardon is void. Therefore any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole, for the king was misinformed.

Words have also a very imperfect effect in pardons. A

pardon

pardon of all felonies (for proceedings) but he conviction or attainder must be particularly mentioned. A pardon of felonies will not include piracy, for that is felony punishable at the common law. It is also enacted by 13 Rich. II. c. 1. that no pardon for treason, murder, or rape, shall be allowed, unless the offence be particularly specified therein; and particularly in murder, it shall be expressed whether it was committed by lying in wait, assault, or malice prepense. Pardons of murder were therefore always granted with a *non obstante* of the statute of King Richard, till the time of the revolution, when the doctrine of *non obstante* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the court of king's bench, that the king may pardon on an indictment of murder, as well as a subject may discharge an appeal. Under these and a few other restrictions, it is a general rule, that a pardon shall be taken most beneficially for the subject, and most strongly against the king.

A pardon may also be *conditional*, that is, the king may extend his mercy upon what terms he pleases; and may annex to his bounty a condition either precedent or subsequent, on the performance whereof the validity of the pardon will depend. But although the king may pardon conditionally, or remit part of the sentence of the law, he can in no case aggravate such sentence, or alter the terms of it by any fanciful commutation.

With regard to the manner of *allowing* pardons, it may be observed, that a pardon by act of parliament is more beneficial than by the king's charter; for a man is not bound to plead it, but the court must, *ex officio*, take notice of it; neither can he lose the benefit of it by his own *laches*, or negligence, as he may of the king's charter of pardon. The king's charter of pardon must be specially pleaded, and that at a proper time: for, if a man is indicted, and has a pardon in his pocket, and afterwards puts himself upon his trial by pleading the general issue, he has waived the benefit of such pardon; but, if a man avails himself thereof as soon as by course of law he may, a pardon may either be pleaded upon arraignment, or in arrest of judgment, or in bar of execution. Anciently, by 10 Edw. III. c. 2. no pardon of felony could be allowed unless the party found sureties for the good behaviour before the sheriff and coroners of the county; but that statute is repealed by 5 and 6 W. and M. c. 13., which, instead thereof, gives the judges of the court a discretionary power to bind the criminal, pleading such pardon, to his good behaviour with two sureties, for any term not exceeding seven years.

Lastly, the *effect* of pardon by the king, is to make the offender a new man ; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains his pardon ; and not so much to restore his former, as to give him a new, credit and capacity. But nothing can restore or purify the blood when once corrupted, if the pardon be not allowed till after attainder, but the high and transcendent power of parliament. Yet if a person attainted receives the king's pardon, and afterwards has a son, that son may be heir to his father.

Pardons (according to some theorists) should be excluded in a perfect legislation, where punishments are mild but certain ; for that the clemency of the prince seems a tacit disapprobation of the laws ; but the exclusion of pardons must necessarily introduce a very dangerous power in the judge or jury, that of construing the criminal law by the spirit instead of the letter ; or else it must be holden, what no man will seriously avow, that the situation and circumstances of the offender, though they alter not the essence of the crime, ought to make no distinction in the punishment. In pure democracies there is no power of pardoning lodged in any member of the state but in monarchies the king acts in a superior sphere, and though he regulates the whole government as the first mover, yet he does not appear in any of the disagreeable or invidious parts of it. Whenever the nation sees him personally engaged, it is only in works of legislature, magnificence, or compassion. To him therefore the people look up as the fountain of nothing but bounty and grace ; and these repeated acts of goodness, coming immediately from his own hand, endear the sovereign to his subjects, and contribute more than any thing to root in their hearts that filial affection, and personal loyalty, which are the sure establishment of a prince.

